

Exhibit X

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re

FRE REAL ESTATE, INC.,

f/k/a TCI PARK WEST II, INC.,

Debtor.

)
)
) Case No. 11-30210-bjh11
) Dallas, Texas
)
) February 3, 2011
) 12:05 p.m.
)
)
)

TRANSCRIPT OF HEARING

MOTION TO DISMISS FRE REAL ESTATE, INC.'S
CHAPTER 11 PETITION PURSUANT TO 11 U.S.C. §1112(b)

DUE TO ITS BAD FAITH FILING

OR, IN THE ALTERNATIVE,

TO CONVERT THE CASE TO A CHAPTER 7 CASE
BEFORE THE HONORABLE BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY COURT, CHIEF JUDGE

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1 P R O C E E D I N G S

2 (Audio starts mid-sentence)

3 MR. BUNCHER: With me is David Morgan, vice president
4 of the debtor, and Mr. Greg Crown who is with Prime who
5 testified at the last hearing.

6 THE COURT: Excellent. Mr. Weitman?

7 MR. WEITMAN: Good afternoon, Your Honor. David
8 Weitman and Chris Brown with the law firm of K&L Gates here on
9 behalf of Wells Fargo Capital Finance. I want to thank Your
10 Honor for allowing us to have the hearing today along with your
11 entire staff in facilitating this.

12 THE COURT: Appreciate it.

13 MR. BROWN: Thank you.

14 THE COURT: Mr. Aurzada?

15 MR. AURZADA: Good afternoon, Your Honor. Keith
16 Aurzada on behalf of Armed Forces Bank with the law firm of
17 Bryan Cave. Also in the courtroom is Douglas Neeve (ph.), in-
18 house counsel for Armed Forces Bank, as well as Brent Parsons
19 and he's a representative of the bank. Thank you.

20 THE COURT: Excellent. Thank you. Mr. Andrews?

21 MR. ANDREWS: Good afternoon, Your Honor. Mark
22 Andrews. Law firm of Cox Smith and here on behalf of RMR
23 Investments, Inc., one of the lenders to three of the
24 entities --

25 THE COURT: Very well.

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1 MS. HARTWICK: Afternoon, Your Honor. Jo Hartwick,
2 Stutzman, Bromberg, Esserman & Plifka, on behalf of one of the
3 lenders, Petra CRE CDO 2007-1, Ltd.

4 THE COURT: Thank you. Mr. Warner?

5 MR. WARNER: Afternoon, Your Honor. Michael Warner,
6 Cole Schotz, on behalf of Highland Capital Management, LP,
7 HCMLP, a special servicer for various secured lenders.

8 THE COURT: Very well.

9 MR. KINVIG: Good sunny afternoon, Your Honor.
10 Cameron Kinvig on behalf of American Bank of Commerce.

11 THE COURT: Good afternoon.

12 MR. SAKONCHICK: Good afternoon, Your Honor. Steve
13 Sakonchick, S-A-K-O-N-C-H-I-C-K, for U.S. Bank. We're a
14 secured creditor in Parkway North appearing as a party in
15 interest.

16 THE COURT: Excellent. Mr. Olson?

17 MR. OLSON: Good afternoon, Your Honor. Dennis Olson
18 representing First State Bank & Trust and Bank of Weatherford,
19 secured creditors on one piece of land that was transferred on
20 the eve of the filing.

21 THE COURT: Very well.

22 MR. STABER: Your Honor, David Staber, on behalf of
23 Sidney Wicks as trustee for the Sidney Wicks Revocable Trust, a
24 landlord on the hangars in Addison Airport.

25 THE COURT: Very well. Now I'm surprised not to see

Colloquy

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1 Mr. Leininger. Is --

2 MR. WEITMAN: He works with Mr. Aurzada.

3 THE COURT: Okay. All right. So -- excellent. So
4 the only person that I'm aware we're missing is Mr. Stromberg
5 who told us he was fine with us going ahead, that he apparently
6 is still iced in and was not able to -- did not think he would
7 be able to make it.

8 MR. WEITMAN: Your Honor, David Weitman on behalf of
9 Wells Fargo Capital Finance. We filed a motion to dismiss this
10 case for bad faith filing on January 10th, 2011. That was
11 after the debtor had filed its petition in bankruptcy six days
12 earlier on the first Tuesday of January, 2011. And in our
13 understand -- or from our understandings with the debtor's
14 counsel, then Mr. John Lewis, we learned that there had been a
15 number of transfers that had been made into FRE. We then had
16 the Court set this for hearing. Initially, it was on January
17 27th. And then we tried to get some discovery from the debtor
18 and also from TCI Texas Properties. That's Wells Fargo's
19 borrower which owes us, roughly, 8.2 million dollars. When we
20 couldn't get that discovery, the Court may recall that we had a
21 hearing on that motion for expedited discovery on January 19th.
22 At that time, everyone -- I think we've got the folks here. We
23 all agreed, and it's embodied in an order, that we would waive
24 the time requirements that are set forth in 1112(b)(3), I
25 believe it is. And the Court agreed, and we thank Your Honor,

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1 to set this for hearing on February 3, 2011, originally 1:15
2 for two and a half hours. I surmise we now have four hours.
3 And since that time, we have taken discovery and have received
4 discovery.

5 Your Honor, we intended that this was a Little Creek
6 bad faith failing or something along the lines of what Your
7 Honor has previously ruled on. I guess it was in November of
8 2010 that it certainly fit within the Court's rulings in that
9 case and it's cited in my motion to dismiss. What we came to
10 understand from looking at documents that were delivered to us
11 just a day before our hearing -- that was on January 19th -- is
12 that it's much worse than a Little Creek. It is, if you will,
13 Your Honor, Little Creek on steroids. We had not just G -- a
14 transferor entity, transferred the property without the consent
15 of the lender into the debtor and then filed this petition in
16 bankruptcy. We have come to learn that there are nineteen
17 transferor entities. Nineteen transferor entities.

18 Your Honor, may I hand up a list of the transferor
19 entities?

20 THE COURT: Please.

21 MR. WEITMAN: Thank you. We learned that TCI Texas
22 Properties, the first one there, Your Honor, transferred the
23 property into the debtor. We learned Transcontinental Realty
24 Investors, Inc. -- they transferred their property into the
25 debtor. That's, if you will, Your Honor, 2A. Then we go right

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1 through, if you will, to B, to C, if you will. Those are each
2 from Transcontinental, various properties that are subject to
3 respective secured debt. There's a TCI Adams LLC; TCI Amoco
4 Property LLC; Coventry Pointe; Transcontinental Westgrove,
5 that's number 6, Your Honor; TCI Pantaze; and IORI Centura
6 Inc., number 8; TCI Bridgewood; TCI Hunters Glen; ART Palm LLC;
7 TCI Ridgepoint; TCI 109 Beltline; Thornwood Landing Cattle;
8 Income Opportunity Realty Investors, Inc., did a transfer,
9 that's number 15; Westgrove Air Plaza Limited; American Realty
10 Trust, Inc.; TCI McKinney Ranch; and ART Collection.

11 The nineteen entities transferred all of their assets
12 into FRE and if Your Honor would look at the debtors' statement
13 of financial affairs, there is a --

14 THE COURT: Where do I find that? Is it in your
15 notebooks, I assume?

16 MR. WEITMAN: If I may hand this up for the Court's
17 convenience?

18 THE COURT: Thank you.

19 MR. BUNCHE: Your Honor, if I may, on the first
20 exhibit, I don't know if it's being offered or if it's just a
21 demonstrative exhibit. But --

22 MR. WEITMAN: Just a demonstrative.

23 MR. BUNCHE: -- footnote 3 on the first page
24 indicates that all of the transferor entities are subsidiaries
25 of Transcontinental Realty Investors, Inc. In fact, there are

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1 a few -- number 8, which is IORI Centura. I believe that's a
2 subsidiary of a different entity, subsidiary of Investor
3 Opportunity Trust -- Income Opportunity Trust. Similarly, ART
4 Palm, Inc. -- or, excuse me, ART Palm, LLC, that's number 11,
5 is a subsidiary of American Realty Trust, as well as items 17
6 and 19. So with that correction --

7 THE COURT: Thank you.

8 MR. BUNCHER: And I believe in footnote 2, the
9 principal amount of the secured debt -- I'm not sure that
10 number jives with the debtor's schedules that have been filed
11 which actually shows a secured debt of 181,514,525 dollars.

12 THE COURT: All right. Thank you.

13 MR. WEITMAN: If Your Honor would look at the answer
14 to question 5, which is on page 4 of 11 in the statement of
15 financial affairs --

16 THE COURT: Yes?

17 MR. WEITMAN: -- there the debtor, FRE, has listed
18 the number of foreclosure proceedings that were in the midst of
19 being concluded, if you will, Your Honor. Many of these
20 lenders have filed their own either motions to annul the
21 automatic stay. Mr. Stromberg's client, I know, has done that.
22 Or, they have filed other pleadings arguing that there was bad
23 faith filing by reason of these transfers on the eve of
24 foreclosure. I would like the Court to take notice of the
25 number of foreclosure proceedings that were scheduled that now

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1 the debtor is seeking to contest.

2 THE COURT: Very well.

3 MR. WEITMAN: Your Honor, what we have here, which is
4 highly, highly unusual, is not just nineteen transferor
5 entities, transferring their real estate into FRE, but then FRE
6 issued notes back to the transferors. And Your Honor can see
7 the amounts of the seller notes that are in this fourth column.
8 And they total roughly -- we've heard different numbers --
9 forty-eight to fifty million dollars, the cost of adjustments.
10 So, if you will, Your Honor, forty-eight, fifty million dollars
11 is transferred back to the transferor entities and those
12 transferor entities then transferred these up to the parent
13 entity of the transferor. And that's why I have, Your Honor, a
14 column of the subsequent transferee of the seller note. So
15 these went up to the parent, the owners, of the transferor. We
16 think that would have been enough to say --

17 THE COURT: So -- hang on. Just let me make sure I
18 understand. So when the debtor bought this property, it issued
19 notes payable to the transferor entities who, in turn, have
20 dividended them up --

21 MR. WEITMAN: Exactly.

22 THE COURT: -- to their parent entity?

23 MR. WEITMAN: Correct.

24 THE COURT: All right.

25 MR. WEITMAN: And in fact, as Your Honor will see

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1 later on in the voluminous exhibit notebook that we have here,
2 there is actually a distribution agreement by which the
3 transferor sends it on up to the parent. That would have been
4 bad. Now here's another one because we just kept looking at
5 more and more documents, just sort of astonished at what
6 occurred here.

7 Then that parent entity then sold the membership
8 interest or the stock ownership interest in these transferor
9 entities and they transferred it to -- called ABCLD Income.
10 The parent entity of the debtor is ABCLD Properties.

11 MR. BUNCHER: Just so the record's clear, the parent
12 of the debtor is ABCLD Properties LLC. The parties that
13 received the interest in the transferors was ABCLD Income LLC.

14 THE COURT: Somebody have a flow chart of all of this
15 for me?

16 MR. WEITMAN: Some of this --

17 THE COURT: That's unfortunate.

18 MR. WEITMAN: We don't necessarily have a flow chart.
19 But we do have a stipulation that kind of sets forth the
20 various transactions. And I can hand that up to the Court
21 later on. I think we're in the midst of doing that, of working
22 through it. And I'm sure we can do that shortly, Your Honor.

23 THE COURT: All right.

24 MR. WEITMAN: So, Your Honor, we not only have ABCLD
25 Income LLC receiving the ownership interest of these entities,

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1 okay, we then further have a situation where FRE Real Estate --
2 I think it was called Fenton Real Estate previously -- it then
3 sold -- okay, the owner of that was Transcontinental. Okay,
4 the owner of the debtor --

5 THE COURT: Okay. Let me go back just to make sure -
6 - and somebody should prepare a flow chart so that this can be
7 shown. But as I understand it, then the parent entity of the
8 transferor shown on your demonstrative A was originally, at
9 least with respect to most of the entities, Transcontinental
10 Realty Investors, Inc. And what I'm hearing you tell me is
11 that basically, Transcontinental Realty Investors, Inc.
12 transferred its ownership, whatever those might be, in each of
13 the transferor entities into ABCLD --

14 MR. WEITMAN: Income LLC, which is affiliated with
15 the debtor's parent --

16 THE COURT: Hang on. Just --
17 (Pause)

18 THE COURT: All right. And what -- I'm sorry.
19 What's the relationship of Income LLC to Properties LLC?

20 MR. WEITMAN: Well, we took the deposition of the
21 debtor's turnaround chief restructuring officer on the 27th.
22 And the gentleman's name is Mr. Morgan. And we asked him. And
23 he said he didn't know. But I'm assuming --

24 THE COURT: But you started this by saying that we
25 transferred it --

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1 MR. WEITMAN: They're affiliates.

2 THE COURT: -- to Properties LLC. And Mr. Buncher
3 corrected you. So Properties does something.

4 MR. WEITMAN: Properties is the owner of the debtor.

5 THE COURT: So ABCLD Properties LLC owns FRE?

6 MR. WEITMAN: Yes, ma'am. Yes, Your Honor.

7 THE COURT: All right. And is it true that
8 Transcontinental Realty Investors, Inc. is a public company?

9 MR. WEITMAN: Yes. That's my understanding, yes,
10 Your Honor. In addition --

11 THE COURT: And what about these ABC entities?

12 MR. WEITMAN: As is in American Realty Trust and --
13 which is another one of the transferees of the notes, Your
14 Honor. Does Your Honor see that on 11?

15 THE COURT: Yeah. Well, 11 is ART Palm.

16 MR. WEITMAN: Right. But then to the right of that,
17 the subsequent transferee --

18 THE COURT: Yes?

19 MR. WEITMAN: -- is American Realty Investors.
20 That's public.

21 THE COURT: That's its parent. That's its parent.

22 MR. WEITMAN: Correct. Yes.

23 THE COURT: And did American Realty Investors
24 transfer its ownership interest to Income as well?

25 MR. WEITMAN: We believe so. I haven't seen all the

Colloquy

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1 documents. We can --

2 THE COURT: Mr. Buncher?

3 MR. WEITMAN: I believe that's correct. I think the
4 public entities that ultimately were the owners of these
5 subsidiaries divested themselves of the ownership interest in
6 these entities that held these properties prior to them being
7 transferred into the debtor, is what he's referring to. And I
8 believe --

9 THE COURT: You lost me there. I understood it to be
10 after. It's before?

11 MR. BUNCHER: All of the documents -- well, you're
12 correct that I believe some of the transfers of the ownership
13 interest may be on December 27th as opposed to the transfers of
14 the properties were effective December 23rd. But nonetheless,
15 looking at it as a whole, the public entities end up divesting
16 themselves of the ownership of the entities that transferred
17 the properties into the debtor. And they divested
18 themselves --

19 THE COURT: In exchange for what? What did they get
20 for that?

21 MR. BUNCHER: There's a contract, I believe, whereby
22 they -- well, they received a note -- I'm trying to make sure I
23 don't say something that's inaccurate here. The properties
24 were transferred to the debtor. The debtor gave promissory
25 notes back to the transferring entity. That transferring

Colloquy

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1 entity distributed or dividended them up into the parent --

2 THE COURT: To their parents --

3 MR. BUNCHER: -- of those entities.

4 THE COURT: -- which were public entities.

5 MR. BUNCHER: Right. The --

6 THE COURT: And then the public entities transferred
7 their ownership interest in the transferor entities --

8 MR. BUNCHER: Right.

9 THE COURT: -- to ABCLD Income --

10 MR. BUNCHER: Yes, Your Honor.

11 THE COURT: -- as I understand it. And my question
12 is what did the public companies get for transferring the
13 ownership interest to ABC?

14 MR. BUNCHER: The purchase agreements with ABCLD
15 Income provide that they were given a thousand dollars cash at
16 closing for the stock. Essentially, this -- once the property
17 was transferred out and the debtor assumed all the indebtedness
18 that that entity had associated with the property, that entity,
19 the transferor entity, was nothing but a shell at that point in
20 time. So the purchase agreements transferring the stock or the
21 membership interest simply recite a thousand dollars cash paid
22 at closing.

23 THE COURT: And who owns ABCLD Income LLC?

24 MR. BUNCHER: Your Honor, I believe, ultimately,
25 there's a Mr. Akin and a Mr. Shumate that indirectly own both

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1 ABCLD Income and ABCLD Properties. There's some intervening
2 entities between Mr. Akin and Shumate and the ABCLD Income and
3 ABCLD Properties. But the ultimate owners of those two
4 entities are Mr. Akin and Shumate. And I believe one --

5 THE COURT: What happened to the public shareholders
6 of --

7 MR. WEITMAN: American Realty?

8 THE COURT: -- ART and Transcontinental Realty
9 Investors?

10 MR. BUNCHER: Nothing as far as I know. They're --

11 THE COURT: Well, except they now own entities that
12 own nothing.

13 MR. WEITMAN: They've got a seller note, Your Honor.

14 MR. BUNCHER: The entities -- they own -- they
15 ultimately own the promissory notes that were given back in
16 exchange for the perceived equity value in all these properties
17 that were transferred. The debtor assumed the debt --

18 THE COURT: Okay. So when the parents transferred
19 their ownership interest, they kept the notes.

20 MR. BUNCHER: Ultimately, yes. But the public
21 entities --

22 THE COURT: Kept the notes.

23 MR. BUNCHER: -- they're -- directly owned the
24 promissory notes, the seller notes as we've called them, that
25 were given back by the debtor --

Colloquy

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1 THE COURT: Right.

2 MR. BUNCHER: -- in exchange for what was perceived
3 by the debtor to be the equity value in the property beyond the
4 debt that was assumed by the debtor.

5 THE COURT: So when the public entities transferred
6 their ownership interest in the transferor entities, that did
7 not include the notes from the debtor.

8 MR. BUNCHER: Correct. The notes had already been
9 distributed under the distribution agreements on 12/23. I
10 believe the purchase agreements with respect to the transfer of
11 the stock or ownership interest are dated December 27th.

12 MR. WEITMAN: Then, Your Honor, one other transaction
13 that we would like to share with Your Honor and that we have
14 seen the transaction documents for is that you had, if you
15 will, FRE prior to -- that's the debtor -- prior to December
16 23 -- the owner of FRE is none other than Transcontinental
17 Realty Investors. Transcontinental Realty Investors then sell
18 its ownership interest in the debtor to ABCLD Income. And
19 ABCLD Income then is obligated to take this property and,
20 subject to all the debt and all of the trade debt and the like.
21 So again, we have now -- everything has moved completely, if
22 one were to look at this flow chart that Your Honor would like,
23 and we can provide it for the next hearing -- everything is
24 completely moved from the Transcontinental, American Realty and
25 Income Opportunity side, if you will, to ABCLD Income, ABCLD

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1 Properties and FRE. And in return, what's left here is they'd
2 essentially monetized their equity interest with notes, seller
3 notes, that when Your Honor looks at it, you'll see that it's
4 not subject to adjustments. They are not subordinated to any
5 of the other unsecured debt. They've just leveraged the
6 daylights out of FRE Real Estate to the disadvantage of all of
7 the other unsecured creditors of each of the respective
8 nineteen entities.

9 Your Honor, we also would like, just so Your Honor
10 can sort of keep what I kind of call a scorecard -- we've got
11 2.9 million dollars worth ad valorem taxes. That's across the
12 various properties with respect to 2010. We came to learn
13 through the depositions that, in fact, roughly, about a million
14 eight, I believe it is, of ad valorem taxes on the various
15 properties for 2009 were not paid. And the transferor entities
16 basically refinanced it through one of these tax financing
17 entities. So if Your Honor looks at the schedules and sees an
18 entity called Propel Financial Services, Propel finances first
19 lien ad valorem taxes. So there's really another -- I think
20 it's another million nine unsecured debt, Your Honor. The
21 total amount in the entire case now is a million four. What we
22 wanted to understand was entity by entity, how much is out
23 there. What's the impact. So we visited with Mr. Buncher and
24 also with his financial advisory person for the debtor, Mr.
25 Crown, from Prime Asset Management and we've included this

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1 amount on the right-hand column so Your Honor can see a number
2 of these entities have no unsecured trade debt. Some others
3 have some sizeable unsecured trade debt. The thinking is, Your
4 Honor, that if an unsecured trade creditor were in one case and
5 the entity went into bankruptcy or the property were to be
6 sold, in this example, they might get a forty percent
7 distribution after the payment of the secured debt and the ad
8 valorem taxes. Now with this de facto substantive
9 consolidation pre-bankruptcy, they share pro rata with not only
10 the other unsecured creditors from the other cases that are now
11 jumbled in there with the other entities, if you will into FRE,
12 but you also have the deficiency claims of the various
13 undersecured creditors in this case.

14 Your Honor, if you see the summary of schedules --
15 (Pause)

16 MR. WEITMAN: -- you see, Your Honor, that there
17 are -- and I think Mr. Buncher mentioned this earlier, there's
18 181 million dollars of secured creditors.

19 THE COURT: Where am I going to find the summary?

20 MR. WEITMAN: May I hand this up to Your Honor?

21 THE COURT: You may.

22 MR. WEITMAN: Thank you.

23 THE COURT: Thank you.

24 MR. WEITMAN: Your Honor sees 181 million dollars
25 worth of secured claims.

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1 THE COURT: Hang on. So you're looking at Schedule

2 A?

3 MR. WEITMAN: Yes, Your Honor.

4 THE COURT: All right. So -- I think you gave me a
5 bunch of copies --

6 MR. WEITMAN: Oh, I'm sorry.

7 THE COURT: -- of the same thing.

8 (Pause)

9 THE COURT: All right. I see 181.

10 MR. WEITMAN: And then you see on the subsequent
11 pages the various secured creditors and the properties, if you
12 will, Your Honor, that comprise this debt.

13 THE COURT: Yeah.

14 MR. WEITMAN: If any of those properties are
15 undersecured, if the creditors are undersecured, that, too,
16 would harm an unsecured creditor who would otherwise be able to
17 get a larger distribution on a case by case or transfer by
18 transfer entity. So we think that prejudices the unsecured
19 creditors. And I would point out, Your Honor, that -- again,
20 it was last night so I don't know how much was going to be
21 heard now, but Mr. Staber has come in representing an unsecured
22 creditor with 153,000 dollar unsecured claim who is joined in
23 the dismissal also arguing bad faith because that harms his
24 client's interest.

25 Your Honor, what we also tried to do in looking at

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1 Little Creek and our depositions and what the Court will hear
2 today is we want to find out what is behind FRE Real Estate,
3 the debtor. What we found out is that the chief restructuring
4 officer was told here's the deal, everything's been signed up.
5 He was told this on December 23, 2010. He had a meeting, the
6 offices, at the same building with the principals of
7 Transcontinental and all of their operations. The offices --
8 and those are the same offices, I believe, of FRE Real Estate
9 and the same offices of ABCLD Income and Properties. That's
10 where a Mr. Akin, the principal -- they all hang out at the
11 same location, 1800 or 1750 Valley View Lane. They had a
12 meeting. They said do you want to be the chief restructuring
13 officer. We've done all these things. We have -- bless these
14 transactions. There's going to be a seller note. There's all
15 these different documents. And we want you to get us through
16 the Chapter proceedings. Mr. Morgan said he'll look at it and
17 came back and said, hey, I like it. Looks good. I'm going to
18 create value. One, he has no salary and there's no money to
19 pay him a salary. His financial and advisory services --
20 where's that going to come from? Well, it comes from none
21 other than Prime Asset Management which is an affiliate of
22 Transcontinental which is Mr. Crown, who is, I think, one of
23 the principals there. He's testified. He provided the
24 financial advisory services for the transferor entities prior
25 to December 23. He is now providing them to the debtor after

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1 December 23 and into the Chapter proceedings. Asked, where's
2 the money going to come from to pay Prime Asset Management? No
3 charge. No charge. Mr. Akin and Mr. Moos, M-O-O-S, at
4 Transcontinental. It's all in the deposition. We'll cover it
5 again in the courtroom -- said he'll help you through all this.
6 He can make sense of the finance. Then we asked well, who's --
7 where's the property manager. Well, that was Regis Capital
8 Management. Who was the property manager before December 23,
9 2010? Regis Capital Management. What happens effective
10 December 23? Who's the property manager for all of the same
11 properties? Regis Capital Management. How do they get paid?
12 Well, three percent of the gross revenues like most property
13 managers. Where do they office? It's either 1750 Valley View
14 Lane or 1800 Valley View Lane. Who else offices there? The
15 entire Prime Asset world, if you will, and Transcontinental and
16 the rest. Are there other employees? No. There's some
17 officers. But, as we covered in the deposition, and we can
18 hear it again either later today or next time we all get
19 together, the principals of FRE are devoted to other tasks and
20 they've said, Mr. Morgan, you run with that. Find value. We
21 asked where's the money to pay for all these things. Well,
22 Your Honor, knows from the cash collateral hearing and the
23 budgets there's no excess cash flow that's not encumbered.
24 Certainly, Mr. Warner, representing NexBank, is not going to
25 allow his net operating income from his office buildings to go

Colloquy

23

1 for the lenders that have liens on the raw land. And there's a
2 lot of raw land here, Your Honor. I think their answer is --
3 and it may sound a little bit humorous is, well, there's
4 nothing to mow. And that's the only expense. And if we keep
5 having ice, there'll never be anything to mow around there. So
6 they wouldn't have a budget to worry about the raw land.
7 That's their answer. That's what we heard at the cash
8 collateral hearing. Don't worry. There's no money.

9 What is the debtor's answer to all of this 'cause,
10 again, they don't pay Prime. They don't pay Mr. Morgan
11 although he testified, not a problem. I'm going to get a
12 success fee. I said, well, how do you get a success fee if
13 you've got as to each property heavily secured ad valorem taxes
14 on the top or, if you will, 2009, 2010, 2011 -- we know under
15 32.01 of the Texas Tax Code automatically attaches on the first
16 of the year. Then you've got the trade creditor claims.
17 You've got the seller note claims. How do you get paid, Mr.
18 Morgan and how do you define a success fee? His answer:
19 they'll work something out with the people that hold the seller
20 notes. Are there other employees? No. Is there money to pay
21 them? No. Did they outsource all of their services? Yes.
22 That looks like Little Creek a lot. Same issues.

23 I've already discussed the fact that everything was
24 on the brink of -- or many properties were on the edge of
25 foreclosure. Many of the properties are in default. Each of

Colloquy

24

1 the lenders that are here -- I mean, when the Court looks at
2 whether or not the bad faith criteria exist, we look at the
3 employees. Say, well, was there a two-party creditor dispute,
4 two-party dispute? Your Honor, I would maintain that what, in
5 fact, we have is we've got nineteen two-party disputes, if you
6 will, with the lenders. I don't think that's the way you get
7 around the issue of two-party disputes by saying I'm going to
8 aggregate all of these different properties and bring in all
9 these lenders involuntarily.

10 When Your Honor looks at the schedules, and we can go
11 through this in greater detail, we've got a number of entities
12 that really should have been single asset real estate cases --
13 I mean, with the protections of 362(b)(3). So what ends up
14 happening? Well, they don't check that box. Not when you
15 brought in nineteen entities into one. If what they've done
16 works, Your Honor, they need to be at the next Texas bar
17 business conference to talk about how they're able to pull this
18 off. I don't think you can.

19 Mr. Andrews pointed out an interesting section of the
20 Code. I think that is 362(d)(4) where they speak of the stay
21 being lifted with respect to real estate if there has been an
22 intent to hinder, delay or defraud creditors and there have
23 been transfers of the ownership interest in the debtors' -- in
24 the property prior to the bankruptcy without the lender's
25 consent. I don't know if we're there or not but it certainly

Colloquy

25

1 evidences a congressional intent that these types of actions
2 should not be allowed.

3 When Your Honor looks --

4 THE COURT: Mr. Weitman, I don't want to -- we've
5 been going about forty minutes.

6 MR. WEITMAN: Oh, we have? I'm sorry.

7 THE COURT: And --

8 MR. WEITMAN: -- last night --

9 THE COURT: You all are not going to get sixteen
10 hours for this hearing. We just don't have that kind of time.
11 So --

12 MR. WEITMAN: I've got one more minute? Your Honor?

13 THE COURT: -- I just want you to --

14 MR. WEITMAN: Thank you. No. Thank you very much.
15 Your Honor, the issue is this. Bad faith filing we think
16 absolutely. Once the Court determines it is a bad faith filing
17 there's authority that suggests that you don't even look at
18 whether there are unusual circumstances. It's game, set,
19 match. There's authority for that. If Your Honor looks at and
20 determines, gee, can the debtor then meet its burden to show
21 that there are unusual circumstances such that the requested
22 dismissal is not in the best interest of creditors, I would
23 note for Your Honor the number of secured creditors in this
24 courtroom along with Mr. Staber's client that are saying forget
25 it. Bad faith. We want out.

Colloquy

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1 Last, the key thing is is what does the debtor hope
2 to do. The debtor has offered a number of cases that are
3 really different than what we have here. When Your Honor looks
4 at the debtor's response, you see things of, gee, maybe it
5 isn't so bad, the transfer -- the assets to an entity and then
6 go into bankruptcy. When Your Honor delves into those cases,
7 you see that in those cases, there was funding who'd handle all
8 these cases. There was a capital -- a working capital
9 facility, debtor-in-possession financing. There were
10 commitments from the parents of the transferee entity. There
11 are all of these things. Mr. Morgan was questioned at his
12 deposition. He said, well, if we get into it, I'll try to put
13 together an investor package and see if anyone's interested in
14 coming up with some money. So he has nothing. He has nothing
15 beyond what is encumbered.

16 Your Honor, there are other lenders. I'll let them
17 speak. And thank you.

18 THE COURT: Thank you. Mr. Aurzada?

19 MR. AURZADA: Thank you, Your Honor. In my opening,
20 I'd like to do two things. First, I'd like to introduce who my
21 client is and, second, augment what Mr. Weitman said but I'll
22 try not to be repetitive.

23 THE COURT: Please.

24 MR. AURZADA: My client is Armed Forces Bank. They
25 are a secured creditor of the debtor. They have liens on six

Colloquy

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1 parcels of raw land in Dallas, Travis and Collin Counties.
2 Prior to the petition date, those liens aggregated to just over
3 seventy-two million dollars. They are now cross-collateralized
4 and cross-defaulted.

5 The way we found our way to this case is by virtue of
6 having posted a for foreclosure sale on January 4, 2011. We
7 had previously posted the property for foreclosure but had
8 worked out extensions of the foreclosure date at various times.

9 None of the Armed Forces collateral produces income
10 that we are aware of. It is, in essence, vacant land. Propel
11 and its successors have tax liens as the debtors have not paid
12 the 2009/2010 taxes. I think the evidence will show that it is
13 unlikely that there is an ability for the debtors to pay the
14 2011 taxes.

15 If it would please the Court, I'd like to hand up a
16 demonstrative that just kind of demonstrates the liens of Armed
17 Forces Bank.

18 THE COURT: Please. Thank you.

19 MR. AURZADA: And with respect to each of these
20 columns, I'll go through them briefly. The name of the debtor,
21 that's our debtor. The common name of the property, the
22 address of the property, which is really just identifying the
23 county; a description of what it is. And so we're using the
24 vernacular "dirt" and it's describing the size of the parcels.

25 THE COURT: All right.

Colloquy

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1 MR. AURZADA: The prior owner, through the secured
2 lender, is the seventy-two million dollar debt. And then out
3 to the right, we've included the appraised value. And the one
4 thing I did want to note on the appraised value is that for
5 purposes of the motion to dismiss, we have stipulated with the
6 debtors that they can use our appraisals for this hearing and
7 this hearing only. They do show that we are marginally
8 oversecured.

9 THE COURT: What is the aggregate of these appraised
10 values, if you know?

11 MR. AURZADA: Eighty-six million.

12 MR. BUNCHER: Your Honor, just for the record, since
13 this is a demonstrative exhibit, our schedules actually
14 schedule 56.788 million as the secured debt for Armed Forces.
15 I'm only pointing out the fact that there may be dispute about
16 total debt owing.

17 MR. AURZADA: We'll be happy to prove up our debt,
18 Your Honor. And maybe that's not something we need to do for
19 purposes of the motion to dismiss. But certainly if we draw an
20 objection to our proof of claim, we'll be happy to prove up the
21 indebtedness.

22 THE COURT: All right.

23 MR. AURZADA: The transfers from the prior owners of
24 these properties violated the deeds of trust. I think that'll
25 be a consistent theme among all of the secured lenders. And in

Colloquy

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1 particular, I did want to note one thing. The evidence is
2 going to show that on the day of the filing, January 4th, we
3 were very nervous at my shop about whether or not we should or
4 should not foreclose not knowing that these transfers to FRE
5 had occurred. I had gotten a courtesy call from Mr. Lewis the
6 night before saying I'm getting ready to file the bankruptcies.
7 And I woke up on Tuesday morning, checked PACER, and I didn't
8 find any of my borrowers or any of the property owners. And
9 so, it was a bit of a leap of faith in talking to Mr. Lewis and
10 him saying, look, I'm serious. They've been transferred. I
11 didn't have the deeds. But we went ahead and postponed the
12 foreclosure sale based upon that. And so, my point there is at
13 some level, the Court is going to have to evaluate the good
14 faith of the filing. And the evidence is going to show that in
15 the period of time between December 23rd when the transferred
16 documents were signed -- of 2010 -- and January 3rd of 2011, my
17 client was of the impression that they were still dealing with
18 the prior owners and that there was dialogue back and forth
19 regarding maybe there's a chance we'll be able to work this
20 out; maybe we won't. But my client was clearly under the
21 impression that the prior owners were in possession of these
22 properties; and number two, FRE never appeared. No one called
23 and said, hey, I'm the new owner of these properties. I'd
24 really like to work this out so I can avoid the foreclosure
25 since I just signed a note for the perceived equity of this

Colloquy

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1 property.

2 THE COURT: When did Armed Forces Bank learn that
3 there was an entity called FRE that was now the purported owner
4 of the property?

5 MR. AURZADA: The morning of January 4th when I
6 talked to John Lewis.

7 Mr. Weitman's schedule that he handed up, I thought
8 was a very good one as it relates to, for example, American
9 Realty Trust -- that's number 17 on his chart. The amount of
10 the assumed trade debt is \$8,575.01 against seventy-two million
11 dollars of secured debt and a perceived value of that property
12 of fifty-one million.

13 If I look at 18, that's another one of our borrowers.
14 We have zero trade debt assumed and that's a 2.3 million dollar
15 property. ART Collection, Inc. -- again, zero assumed trade
16 debt and 6.7 million dollar property and a perceived debt of
17 seventy-two million.

18 My point there is when you compare the drastic lack
19 of unsecured debt to the significance of the secured debt, I
20 think the Court's going to find that that factor of relatively
21 little unsecured debtor of the Little Creek factors is
22 satisfied fairly plainly.

23 What the evidence is not going to show, and this may
24 be more important than even some of the evidence that it does
25 show is if there was any purpose of this filing other than to

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1 stop the foreclosures -- and why do I say that? It's obvious.
2 Lots of cases start to stop a foreclosure. What we don't have
3 here but we do have in some of the cases cited by the debtors
4 is we don't have a plan to infuse capital. There's no equity
5 sponsor saying here's a letter of intent. Here's a purchase
6 order for the property. Here's this new additional managerial
7 experience that I'm bringing to this case so that I can perform
8 a workout.

9 We don't have any employees to protect. We don't see
10 a current business plan. There hasn't been a disclosure
11 statement. There hasn't been a plan. There hasn't been an org
12 chart. We haven't seen prospects for business. And we don't
13 have unsecured creditors here protesting the dismissal of these
14 cases. And as I alluded to earlier, and I got this out of
15 order, FRE didn't show up. Even though they took the transfers
16 on the 23rd, they didn't show up until the bankruptcy. And it
17 just doesn't seem right to me that somebody took possession of
18 all of this property on December 23rd and wasn't banging on the
19 doors of the secured creditor saying I have to work something
20 out or I'm going to lose my investment. That doesn't make
21 sense. At least, that's not how I would have done it had I
22 have been there.

23 So I think what's clear is that the only benefit of
24 this case is to equity. And I'm going to wrap up quickly
25 'cause I know we need to get moving. But if I look through the

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1 Little Creek factors, I think the evidence is going to show to
2 the Court clearly that they've all been met

3 THE COURT: So what do you think the benefit to
4 equity is?

5 MR. AURZADA: Time. I think it's clearly time. Are
6 these one-assets? Yes but for the fact that they've been
7 mashed together. Do the secured creditors' liens encumber the
8 tracks? Yes. Are there no employees? Yes. Are there few, if
9 any, unsecureds? Yes. Were the properties posted for
10 foreclosures? Yes. Did the bankruptcy only forestall
11 foreclosure? Yes, given the absence of any plan, LOI, reason
12 to be here.

13 I've talked about my allegations of wrongdoing. Mr.
14 Weitman has talked about some of his own. And this was a one-
15 asset -- or, I guess, technically, it was a two-asset entity.
16 But it was revitalized for purposes of doing this bankruptcy
17 case.

18 The one thing I think the Court's probably going to
19 struggle with in this whole matter is what's the consequence of
20 the dismissal. We've got a huge mess. We've got deeds going
21 down to FRE. We've got notes going up to the parent and
22 they're being transferred off to the side. I don't think the
23 Court should feel obligated to try to fix that mess. I really
24 don't. I think if the Court proceeds -- if I dismiss this
25 case, it's going to unravel and it's going to be a big jumbled

Colloquy

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1 mess. Well, it probably will be but I don't think the Court
2 needs to feel obligated to try to fix that.

3 This is clearly a self-inflicted wound. Surely the
4 buyer knew this was a potential in trying to amass these
5 properties into one entity instead of doing an organized series
6 of nineteen bankruptcies.

7 THE COURT: But the buyer -- I mean, who's the
8 difference from -- I mean, I assume Mrs. Akin and Shuman (sic)
9 were the owners -- the ultimate owners of the prior -- well, I
10 guess not because we had public entities.

11 MR. AURZADA: Right.

12 THE COURT: So who are they --

13 MR. AURZADA: I think -

14 THE COURT: -- based upon the pre-petition structure?

15 MR. AURZADA: Who are they?

16 THE COURT: Yes.

17 MR. AURZADA: They're all people that work and are
18 affiliated with the same group of entities that had value. And
19 I will tell you, it will be very hard to unwind all of that
20 because there are so many entities. And this has been over the
21 course of, quite frankly, my career, starting back in 2000,
22 dealing with the 1800 and 1750 Valley View companies. They are
23 very sophisticated people when it comes to creating entities
24 and relationships among them. But one thing that does remain
25 clear is the people involved are always the same people.

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1 Sure, you can draw the legal distinctions between the
2 entities but for purposes of the Court asking me who is the
3 buyer, I think it's clear the buyer is the same people that
4 were the seller if you look at the true economics of how that
5 transaction was done. Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Aurzada. Anyone else on
7 the movants' side wish to make an opening statement? Mr.
8 Stromberg?

9 MR. STROMBERG: Thank you, Your Honor.

10 THE COURT: Welcome.

11 MR. STROMBERG: Thank you. Tough time getting here.
12 I apologize for being a few minutes late.

13 THE COURT: No problem.

14 MR. STROMBERG: Mark Stromberg on behalf of State
15 Bank of Texas. Your Honor, I, too, represent a bank that, like
16 Armed Services Bank, had six parcels under one -- only ours was
17 under one deed of trust. We had posted our property for
18 foreclosure for January 4. We actually ended up foreclosing
19 because we didn't get notice of the filing of the bankruptcy or
20 the relationship between the new entity with which we had done
21 no business, FRE Real Estate or Fenton Real Estate, and our
22 client until we found out about these transfers. So our
23 foreclosures were taking place in the morning. We found out a
24 little bit after 1:00 in the afternoon. We had filed a motion
25 to annul the automatic stay. I'm sure the debtor will contest.

Colloquy

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1 MR. BUNCHER: Your Honor, I'm sorry to interrupt. I
2 just don't want my silence to be an admission that I agree that
3 they "foreclosed" because we contest that they completed the
4 foreclosure prior to the time we received the transfer of these
5 legal titles to the properties.

6 THE COURT: All right.

7 MR. STROMBERG: In any event, Your Honor, our
8 property, like the property that was described by Armed
9 Services Bank, has no income. It's vacant land with the
10 exception that one of the parcels -- we have a tenants-in-
11 common interest in a parking garage that generates no income
12 that's associated with another building. But otherwise, all of
13 our property generates no income. It has tax liens on it.
14 When the conveyance of the property from what was formerly
15 known as Transcontinental Coventry Pointe that was later
16 renamed as Coventry Pointe took place on the December 23rd
17 transfer date, it wasn't recorded until after our foreclosure
18 took place on January 4. We had no prior dealings with Fenton
19 Real Estate or FRE so we had no way of knowing.

20 I'm not going to go over the territory that's already
21 been very carefully mowed by counsel for the other two parties
22 when instead I want to point out is a couple of things that I
23 think perhaps they didn't touch on. First, although I think
24 Mr. Weitman talked about this a little bit, I think one of the
25 things the Court could and should think about is what is the

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1 effect of parties who would otherwise be in a 362(d)(3)
2 situation and is it appropriate for the debtor by conveying all
3 of these properties into a super debtor and filing it what
4 amounts to a de facto substantive consolidated bankruptcy case
5 on the eve of foreclosure -- what rights should those creditors
6 have had and how will they be affected.

7 Number two, I want to talk about -- briefly about the
8 issue in Little Creek about the idea of terminal euphoria
9 associated with the possibility of a plan. And I've been over
10 a lot of this case law. I haven't found anything that's
11 absolutely definitive. But my view, in effect, of how a good
12 faith for filing versus good faith for reorganization works is
13 kind of a two-step process. You can't jump to the second step
14 and say well, we might be able to come up with a plan, even if
15 it's a viable plan, unless you talk about step one, having to
16 do with a good faith in filing of the case. Okay? And what I
17 suspect the debtor will tell you is it's possible that we could
18 come up with a plan in this case although I'm not sure that
19 when the Court tests that that's actually going to be a
20 legitimate claim. But nevertheless, I think what they're going
21 to ask you to do is to forget about all of these other
22 transactions and let them leap up to the top step.

23 But Little Creek also talks about the new debtor
24 syndrome. And those are important facts that are only
25 considered when talking about whether or not you get to go to

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1 the first step so as to be able to get to go to the second.

2 More importantly, however, related to that, both for
3 the individual entities and the debtor as a collective, when
4 you test the theory as to how it is that they intend to
5 reorganize, what they will tell you is it's going to be one out
6 of four things. It's either going to be that they're going to
7 sell some property or they're going to restructure the debt;
8 they're going to refinance the debtor or they're going to use
9 the cash from some of the entities that are generating cash, my
10 properties not included evidently, to run the collective debtor
11 until they can do one or several of these things or perhaps
12 indefinite.

13 None of this, I believe, is in reasonable prospect.
14 As counsel for Armed Services Bank stated, there are no sales
15 in prospect. There is no outside investor standing at the
16 ready to provide financing. Indeed, I think you'll hear that
17 up until the time this case was filed and thereafter, up until
18 the time of Mr. Morgan's deposition, he was not aware of any
19 specific investor who was prepared to do that. In fact, up
20 until the time of his deposition, though that may have since
21 changed, Mr. Morgan had not even asked Transcontinental Realty
22 Investors or any of its affiliated entities if it was able or
23 willing to invest any money in this new debtor. Now, they have
24 personal guaranties -- Transcontinental Realty Investors does
25 for much of this indebtedness, if not all of it. So it would

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1 seem to me that they would be the logical first place to look
2 for this kind of financing. And yet, the chief restructuring
3 officer for the debtor had not made that inquiry at least as of
4 a week ago. And the bankruptcy case had been pending for
5 several weeks at the time. And this was one of his means by
6 which he was going to provide an exit strategy.

7 So the question of whether or not this is a terminal
8 euphoria situation as described by Little Creek perhaps hinges
9 to some degree on whether or not the debtor has undertaken to
10 even pursue, at this point, any of these options that he's
11 going to have and, more importantly, whether or not there is a
12 reasonable prospect by which one or several of these things
13 will come to fruition. So I think that's a second thing that
14 the Court needs to look at.

15 The third is that I believe that there's a question
16 here about improper purpose that perhaps the other two counsel
17 didn't touch on which has to do with the fact that I think this
18 bankruptcy was set up to protect Transcontinental Realty
19 Investors. And as the Fifth Circuit has said in the Canal
20 Place case, that's not an appropriate purpose for a bankruptcy
21 is to protect the guarantor.

22 But I think the reason you can know that is a couple
23 of things. Number one, these notes that were set up, that were
24 upstreamed to Transcontinental Realty Investors were basically
25 calculated based upon the book value that the public entity had

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1 for the property. And if you subtract out the amount of
2 existing indebtedness from that book value, the note was the
3 difference. And then the note was upstreamed so that the
4 parent could say that we got the stock of the entity and we
5 made these transfers so that we didn't lose any value. And, as
6 a basic point, it basically was there to support the book value
7 of the entity. Okay? Which is so as to say they didn't have
8 to report to their shareholders that they had a problem here
9 because they got transferred up what they transferred out. I
10 think that's a problem.

11 I think it's also a problem that they transferred
12 these entities out of entities that had and bore the
13 Transcontinental name into an entity that didn't. Now maybe
14 Fenton Real Estate, perhaps because it was one of the entities
15 that was affiliated in some way with Transcontinental, they
16 will argue, well, surely that's not the case. But I think that
17 the fact that it doesn't bear the name of the public entity is
18 meaningful because all of this relates to what, if anything,
19 Transcontinental had to disclose to its shareholders, its
20 public shareholders, and whether or not this bankruptcy is
21 intended in some part to hide from them the financial effects
22 of this bankruptcy or the existence of the bankruptcy.

23 Finally, Your Honor, I think the Court needs to
24 examine the question of independence. And this was, to some
25 degree, touched on. But I do think that in our discussions

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1 with Mr. Morgan in his deposition, it became pretty clear that
2 he had not made an independent determination as to how it was
3 that this case was going to reorganize at least when he took
4 it. And the people from whom he seeks advice as to how he's
5 going to manage the assets of the debtor, what those assets
6 consist of, what their values are and how it is that they fit
7 into some kind of a reorganization all are people that come
8 from within the same entity.

9 So apart from the question of whether or not a
10 reorganization is in prospect, one might fairly question
11 whether or not the chief restructuring officer who was, in
12 effect, put into this case by insiders of Fenton Real Estate
13 and their parents and affiliates is truly an independent and
14 can exercise independent reorganizational related judgments.

15 I think for those reasons, Your Honor will find that
16 in this case perhaps, better than many others, there are
17 serious considerations related to good faith and dismissal that
18 need to be addressed. Thank you.

19 THE COURT: Thank you, Mr. Stromberg. Mr. Kinvig?

20 MR. KINVIG: Your Honor, I don't plan to pile on. I
21 don't think that's either helpful or a good use of this Court's
22 time. As mentioned, though, I do represent American Bank of
23 Commerce. And we have roughly nine and a half million dollars,
24 plus or minus, debt outstanding. And we're secured by liens
25 and real property which includes raw land, vacant buildings and

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1 an apartment building, 106-unit apartment building, that does
2 produce fairly significant cash flow. And then we also have a
3 lien on some Transcontinental real estate stock and also a lien
4 on a note. And as a point of clarification, we actually did
5 not realize that the stock and the note were even in this
6 bankruptcy until Mr. Morgan's deposition about a week ago. So
7 we're still trying to sort through some things. And we learn
8 more about the debtor every day.

9 However, I did want to point out to the Court the
10 fact that we're in a little bit of a different situation.
11 We're very similar to Mr. Stromberg in that what ended up
12 happening with my client is we filed a notice of foreclosure.
13 We sent it to the entities that we believed owned the property
14 at some point in December of 2010, properly noticed it, gave
15 them twenty-one days of notice. And on January 4th, we
16 foreclosed on certain of our collateral. We foreclosed on the
17 apartment building. We foreclosed on two parcels of raw
18 land -- or actually, one parcel of raw land and one parcel of
19 property that's three and a half acres plus a vacant building.
20 And at that point, we completed the foreclosure process. We
21 were in the process of filing of our deeds. And we get a
22 telephone call from an individual that said he was FRE's
23 counsel and said stop the presses, we've filed for bankruptcy.
24 And we said, well, who are you? They said, well, we're the
25 owner of the property. And it was after everything had

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1 occurred, after the foreclosures had taken place. So we had no
2 prior knowledge of the transfer that now, we come to find out,
3 was on December 23rd and we had no knowledge of the bankruptcy
4 at the time we foreclosed.

5 So we filed our motion to annul the automatic stay.
6 And under a very, very specific set of circumstances, the Fifth
7 Circuit has said in a situation like ours, the Court should
8 annul the automatic stay. And that's an issue for a later
9 date. And I understand the Court doesn't want to hear that
10 before ruling on whether to dismiss the case.

11 I bring that up, though, for the simple fact that if
12 this Court does decide that dismissal is appropriate in this
13 case -- which I believe that the Little Creek factors are
14 certainly met. I think that this case if any case certainly
15 calls for dismissal. But if this Court decides that dismissal
16 is appropriate, what we would ask is that the Court do it in a
17 very structured way under a framework that protects individuals
18 or entities like my client where we've already foreclosed.
19 What we would ask in addition to just an outright dismissal is
20 that if this Court decides that dismissal is appropriate that
21 this Court also annul the automatic stay to sort of go back and
22 bless these foreclosures that have already occurred so we don't
23 have to, post-dismissal, go back and re-foreclose on property
24 that we already foreclosed on to beginning with.

25 Aside from that, we also, frankly, ask Your Honor --

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1 there's cash collateral issues involved here. As you've
2 already heard and will hear in the future -- and that's a
3 pretty major part of this case. My client, according to the
4 budget that the debtor produced at the cash collateral meeting,
5 will be -- I think they will hold around 150,000 dollars of
6 cash collateral by the end of March. And it's accruing at 45
7 to 55,000 dollars a month. And so, we would also ask, Your
8 Honor -- and I would imagine that the other lenders that have
9 interest in cash collateral would also support me on this --
10 that if you decide to dismiss the case that you would set in
11 place some framework. And I'm not even a hundred percent
12 certain of what that framework would look like. But some
13 framework to where the parties' interest in the cash collateral
14 would be protected so that either a lifting of the automatic
15 stay prior to dismissal to allow us to file a state court
16 receiver action to take possession of the cash or to do
17 something else to allow the parties to quickly and conveniently
18 and efficiently get at its cash collateral post-dismissal.

19 So that's really all that I would have to add. We do
20 urge that this Court dismiss the case. But once again, we
21 would urge that the Court dismiss it under a certain framework
22 and do so in a way that protects my client and others like it.

23 THE COURT: All right.

24 MR. KINVIG: Thank you.

25 THE COURT: Thank you.

Colloquy

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1 MS. HARTWICK: Jo Hartwick, Your Honor, for Petra and
2 I will be very brief. I just want to point out that my client,
3 Petra, has a couple of significant differences and it still
4 shares the same concerns as the other lenders whose counsel
5 have addressed the Court.

6 Petra's loan was secured by the Amoco building which
7 is a large office building in New Orleans. And it is one of
8 the few income producing properties. And immediately -- well,
9 another big difference is Petra was not in the process of
10 foreclosing. They were still, they thought, negotiating in
11 good faith with their borrower. So they wouldn't have been
12 particularly surprised if they hadn't been successful in
13 reaching an agreement. They wouldn't have been terribly
14 surprised if their borrower, TCI Amoco Property LLC had filed
15 bankruptcy.

16 But instead, they, too, were shocked to learn that
17 this strange entity called FRE Real Estate somehow had ever
18 owned their interest in the property and was now supposedly the
19 borrower. Their immediate concern, because they are an income
20 -- we are -- it is an income producing property, the immediate
21 concern was what would happen to the cash collateral. And, of
22 course, that concern was exacerbated when we saw the cash
23 collateral motion where it said that the intent was to use the
24 income from the cash producing properties to help prop up,
25 essentially, the ones that weren't generating cash. Although I

Colloquy

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1 think at the hearing nobody urged that position, it was
2 interesting that in the two depositions that have been taken so
3 far of the debtor representative and of a representative of a
4 transferor, both gentlemen testified that that was how they
5 understood that was one of the purposes of this bankruptcy --
6 was to make sure that the money that was being generated by the
7 cash producing property could be used to prop up the ones which
8 were not producing income.

9 We agree with the other counsel that have spoken that
10 these meet the Little Creek factors. And we also agree that
11 although we would like to see the case dismissed as a bad faith
12 filing, we would agree that dismissal should be, if possible,
13 done in such a way that individual lenders' cash collateral is
14 protected. Thank you.

15 THE COURT: Thank you. Anyone else? All right. Mr.
16 Buncher?

17 MR. BUNCHER: Our intention was to reserve our
18 opening remarks/argument. I think this has gone beyond opening
19 statements. But we were going to reserve until they've put
20 their case on, Your Honor, if that's okay with the Court.

21 THE COURT: Fine with me. You ready to proceed?

22 MR. WEITMAN: Yes, Your Honor. Mr. Morgan, I call as
23 my first witness.

24 THE COURT: Mr. Morgan, if you'd come forward and
25 take the witness chair, raise your right hand and be sworn in

Colloquy

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1 before you sit down, yes, sir.

2 (Witness sworn)

3 MR. WEITMAN: Before we start with the witness, Your
4 Honor, has Your Honor seen our amended witness and exhibit
5 list?

6 THE COURT: No.

7 MR. WEITMAN: May I hand this up for Your Honor?

8 THE COURT: You may.

9 (Pause)

10 MR. WEITMAN: Your Honor, as a matter of background
11 on just the exhibits, we have a number of the transferred
12 documents that Mr. Buncher has agreed could be admitted without
13 any argument as to the verification and authenticity. And
14 those are in the book that are both before Mr. Morgan and Your
15 Honor. If I could just very quickly go through these items, I
16 think it will expedite the hearing. If Your Honor notices --
17 and this is something that we're going to get later on -- and I
18 think the Court was concerned also -- the corporate chart, if
19 you will. That's number 1 -- and the officers. Does Your
20 Honor see that general background exhibits on page 2?

21 THE COURT: I'm sorry. Where are you?

22 MR. WEITMAN: I am II, "List of Exhibits".

23 THE COURT: Yeah.

24 MR. WEITMAN: The first one is the list of officers,
25 directors or managers of each --

Colloquy

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1 THE COURT: Yes.

2 MR. WEITMAN: -- of these entities. We will have
3 that by the next time of the hearing. It's just that we rushed
4 things.

5 Your Honor, in addition, we used these exhibits
6 during his deposition and they were premarked. So that's why
7 the numbers are in this sequence.

8 THE COURT: All right.

9 MR. WEITMAN: And we apologize for that.

10 THE COURT: No problem.

11 MR. WEITMAN: Your Honor, we've got the credit
12 agreement of Wells Fargo as number 5.

13 MR. BUNCHER: Excuse me. Can I get a set of your
14 exhibits, please, if we're going to go through your exhibits?

15 MR. BROWN: I provided you a complete set of exhibits
16 yesterday, a hard copy.

17 MR. BUNCHER: Okay. You gave me the exhibits to a
18 stipulation that we still haven't finalized. I -- you don't
19 have a set of exhibits with --

20 MR. BROWN: I gave -- what I had delivered to you is
21 the exact set of exhibits plus any amended exhibits.

22 MR. BUNCHER: Do you have -- I do not have those with
23 me. I assume you'd bring a set of your exhibits but --

24 MR. BROWN: No. I have an original set that --

25 MR. BUNCHER: That's fine.

Colloquy

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1 MR. BROWN: -- you're more than welcome to use during
2 the hearing if you'd like.

3 MR. BUNCHER: If there is something I don't recognize
4 here, Your Honor, I'll ask to see it. But most of this stuff
5 I've seen before.

6 THE COURT: All right.

7 MR. WEITMAN: Number 6 is the continuing guaranty of
8 Transcontinental which basically guarantees the debt of TCI
9 Texas Properties to Wells Fargo. Then we have our list of our
10 collateral. That's number 7. We then have this Exhibit 8
11 which Your Honor saw that little chart a little while ago.
12 That Exhibit 8 is really the trade debt per entity.

13 THE COURT: Right.

14 MR. WEITMAN: So you'll see that throughout. Part of
15 what we've been saying, Your Honor -- and this sort of lines up
16 as TCI Texas Properties then did the transfer. We've got the
17 purchase agreement, Your Honor, by which TCI transfers --
18 agrees to purchase all of that real estate collateral. That's
19 number 10, Your Honor. So when Your Honor goes into her
20 exhibit book, you'll see a purchase agreement. So FRE agrees
21 to buy the TCI Texas Properties, and you see also the aggregate
22 purchase price in the purchase agreement. There is that
23 promissory note. We've been calling it number 11, Your Honor.
24 That's what we've been calling the seller note.

25 THE COURT: Yeah.

Colloquy

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1 MR. WEITMAN: And that's for the -- what happened
2 here is we've got an original principal amount and then it gets
3 adjusted to the number that Your Honor sees in this chart.

4 THE COURT: Okay.

5 MR. WEITMAN: But it's the same seller note.
6 Warranty deeds are in Your Honor's book as well.

7 THE COURT: Mr. Weitman, I'm not -- are you going to
8 walk me through what each of these exhibits is, as opposed to
9 just offering them or --

10 MR. WEITMAN: Well, they're all being offered into
11 evidence. I thought it would be helpful, just in general, to
12 know what these exhibits are that are being admitted into
13 evidence.

14 THE COURT: Well, but I -- then I'm not sure why we
15 have a witness sitting on the witness stand.

16 MR. WEITMAN: Well, I'm going through -- I'm going to
17 go through his testimony in just a few moments. But I think
18 it'd be helpful for Your Honor to have the summary here.

19 THE COURT: Well, I have it. I can read what it
20 says, unless -- I mean, again --

21 MR. WEITMAN: Okay.

22 THE COURT: -- you all are going to have a limited
23 amount of time. And if you think walking me through a document
24 I can read is the best use of your time, fine. I don't care
25 how you use your time.

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1 MR. WEITMAN: Okay. Let me begin.

2 DIRECT EXAMINATION

3 BY MR. WEITMAN:

4 Q. Mr. Morgan, would you state your name for the record,
5 please?

6 A. Richard D. Morgan.

7 Q. And are you the vice president of the debtor, FRE Real
8 Estate, Inc.?

9 A. Yes.

10 Q. Have you been that vice pres -- had that position since on
11 or about December 23, 2010?

12 A. Yes.

13 Q. You're also the vice president, are you not, of ABCLD
14 Properties, as of December 23?

15 A. Yes.

16 Q. Now, you were retained, were you not, as the chief
17 restructuring officer of the debtor?

18 A. Yes.

19 Q. You don't have a contract with the debtor as the chief
20 restructuring officer. Isn't that correct?

21 A. Correct.

22 Q. And there's no cash to pay your salary, is there?

23 A. Nor has been --

24 Q. As the chief restructuring officer?

25 A. -- nor has salary been requested.

Richard Morgan - Direct (Wells Fargo)

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1 Q. Is there any cash to pay your salary or give you any
2 compensation as the chief restructuring officer?

3 A. At this time?

4 Q. Yes.

5 A. No.

6 Q. And you're familiar with the debtor's cash collateral
7 motion and the budgets, correct?

8 A. Yes.

9 Q. Is there a line item for such payment to you?

10 A. No.

11 Q. Now, you're working, what, forty hours a week as the chief
12 restructuring officer?

13 A. About.

14 Q. There's no one else from the debtor's organization that's
15 going to help you on that restructuring effort, is there?

16 A. No.

17 Q. Are you essentially the sole person within FRE working
18 through these issues in the bankruptcy?

19 A. In the decision process, yes.

20 Q. Are you not also officing at the space occupied by
21 Transcontinental Realty Investors?

22 A. Yes.

23 Q. Is that not also the location of American Realty
24 Investors?

25 A. Yes.

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1 Q. Is that also the offices of Income Opportunity Investors?

2 A. Yes.

3 Q. And Prime Capital Management, do they office there as
4 well?

5 A. I don't know that name, but.

6 Q. I'm sorry, Prime --

7 A. Prime Asset, yes.

8 Q. -- Prime Asset Management, excuse me.

9 MR. BUNCHER: I believe its proper name is Prime
10 Income Asset Management.

11 MR. WEITMAN: Thank you.

12 Q. Does the debtor have any type of contractual relationship
13 where it's paying any rent for the office space?

14 A. No.

15 Q. And there's no lease, correct?

16 A. Correct.

17 Q. And there's no money to pay for the rent either, is there?

18 A. Well, saying there's no money, there's no money as long as
19 I stick to what I said I was going to do, and that's not take
20 anybody's collateral and move it to another property.

21 Q. And did you not earlier testify that the way you were
22 going to get compensated down the road is through a success
23 fee?

24 A. That's correct.

25 Q. Can you explain to the Court how you get your success fee?

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1 A. The success fee is the value of the property at the end of
2 the day. Basically, when all the assets are sold and all the
3 debts are paid. And whatever that is, it will be a percentage
4 of that fee -- of that.

5 Q. But there's ad valorem taxes, about 2.9 million correct?

6 A. Correct.

7 Q. There's secured debt of about 181 million, correct?

8 A. Correct.

9 Q. There's trade creditor debt of about 1.4 million, correct?

10 A. Correct.

11 Q. And there's also fifty million -- or forty-eight to fifty
12 million dollars of seller notes, correct?

13 A. Seller notes are a different issue. And the seller notes
14 are, I'm calling them a soft second. Effectively, as I
15 testified in my deposition, the seller notes are individual
16 notes on individual transfers. And I know the documents did
17 not reflect that -- the notes did not reflect that. However,
18 in the filing that Mr. Crown filed for us, we specifically
19 outlined the structure of those notes. And the structure of
20 the note, for example, if your asset is sold, and there's not
21 enough money to pay you to the unsecured creditors and so
22 forth, then the -- whatever is left available is payable
23 against a note. Whatever is not paid then rolls up into a
24 secondary pool which comes after all secured, unsecured,
25 priorities, lienholders and the administrative claims are paid.

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1 Q. But that's not reflected in the purchase agreement,
2 correct?

3 A. It's not reflected in the agreement, but it is --

4 Q. And it's not --

5 A. -- reflected in the filings we made.

6 Q. -- it's not reflected in the various notes, is it?

7 A. I said it again. It's reflected in the filing that we
8 just made.

9 Q. What you're saying is, is that in connection with the
10 debtor's schedules of assets and liabilities, you're now
11 suggesting that they're subordinate?

12 A. I'm not suggesting, I'm telling you.

13 Q. Is there a document by which Transcontinental and American
14 Realty and Income Opportunity subordinated their debt to all of
15 these other creditors?

16 A. It is in the filing that we made.

17 Q. Sir, is there a document by which these parties agreed to
18 subordinate their fifty million or forty-eight million dollars
19 of notes --

20 A. Not a --

21 Q. -- in favor --

22 A. -- specific document. But I can get that document.

23 Q. And the reason you can get that document is because you
24 know the principals of each of those entities to get that?

25 A. No. Because it's already put in the filing, so they have

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1 to comply with that filing.

2 Q. I'm sorry. Are you able to get Transcontinental and
3 American Realty and Income Opportunity to subordinate their
4 debts?

5 A. Yes.

6 Q. How long -- excuse me. Who are the principals that really
7 run Income Opportunity, American Realty and Transcontinental?
8 Is that not Mr. Gene Phillips?

9 A. No. I don't know. I deal with Danny Moos who's the
10 president.

11 Q. And Danny Moos is the individual that contacted you on
12 December 23 --

13 A. Correct.

14 Q. -- to see if you would handle these transactions?

15 A. Yes.

16 Q. So if you will, on the -- excuse me. Mr. Danny Moos, is
17 he also the principal with respect to each of these transferor
18 entities that we've been describing?

19 A. I don't know specifically about that.

20 Q. You're now using the services of Prime Capital, correct?

21 A. Prime Income Asset --

22 Q. Prime Income, I'm sorry. Prime Income?

23 A. Yes.

24 Q. And that's Mr. Greg Crown, who's in the courtroom?

25 A. Yes, sir.

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1 Q. And is that an affiliate of Transcontinental?

2 MR. BUNCHER: Object to calling for a legal
3 conclusion of the witness, Your Honor.

4 THE COURT: Sustained.

5 Q. Is it your understanding that it's related in some manner
6 with Transcontinental?

7 A. My understanding is it's an advisor to.

8 Q. Do they handle all of the financial advisory services for
9 Transcontinental and its affiliates?

10 A. I don't know the scope of that.

11 Q. Are they officing in the same location as Transcontinental
12 and American Realty?

13 A. Yes.

14 Q. And Mr. Danny Moos, did he use the services of Prime
15 Capital for these Transcontinental entities, prior to December
16 23, to assist in the financial advisory services for those
17 entities?

18 A. I can't say who he used.

19 Q. So you don't know whether Prime Capital performed similar
20 financial advisory services for the various transferor entities
21 prior to December 23?

22 A. That's a different question. I told you, I think Prime
23 Income -- Income Asset Management is the advisor to
24 Transcontinental. The question I thought you asked me was who
25 within that group advised him. And I don't know that.

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1 Q. Okay. And where -- how does Prime Income Capital get
2 paid?

3 A. I don't know.

4 Q. Do you have any money in your budget to pay Prime Income
5 Capital?

6 A. No.

7 Q. Are you proposing in any subsequent -- in the present cash
8 collateral motion and budgets, is there a line item for the
9 payment of Prime Income?

10 A. No.

11 Q. Has Prime Income Capital, have they given you all of the,
12 or provided the data and help you complete the schedules of
13 assets and liabilities and the statement of financial affairs?

14 A. I don't want to be technical. But we've called it Prime
15 Income Asset Management one time. Could we stick with that?
16 Because you keep repeating the wrong name.

17 Q. I'm sorry. Prime Income. I'll call it Prime Income.

18 A. Okay.

19 Q. Pardon me. Did they provide the financial advisory
20 services to construct the schedules of assets and liabilities
21 and statement of financial affairs of this debtor?

22 A. Yes.

23 Q. And have they also prepared all the budgets in connection
24 with the cash collateral motion?

25 A. The budgets had already been prepared as part of the

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1 property management schedule.

2 THE COURT: Mr. Weitman, can you step back so that
3 you speak into the microphone. We're having a hard time
4 getting you recorded.

5 MR. WEITMAN: I'm sorry.

6 Q. You also have, do you not, a company called Regis Property
7 Management that's providing property management services for
8 these properties?

9 A. Yes.

10 Q. Did they provide property management services for the
11 transferor entities prior to December 23?

12 A. Property is a very generic term. They provide -- they
13 provide property management services for the income-producing
14 and the vacant buildings that are part of the collateral, but
15 not the land.

16 Q. And that -- Regis, do they office at Valley View with
17 Transcontinental, American Realty, Prime --

18 A. Yes.

19 Q. -- Income? And their compensation that Regis gets is
20 basically three percent of the gross revenues. Is that
21 correct?

22 A. That's for -- that's true for the commercial buildings.
23 The apartments are managed directly by a third-party manager
24 called Sunchase. And Regis or none of those entities gets any
25 income from them.

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1 Q. So there was a previous contract with the transferor
2 entities with Regis as to these income producing properties.
3 And after December 23, you then entered into a new contract
4 with Regis to do the same thing, correct?

5 A. Correct.

6 Q. Have you -- if you know, have you filed a motion to
7 approve the retention of either Prime Income to provide
8 financial advisory services in these proceedings?

9 A. I'm not -- they're not charging me anything.

10 Q. Oh, so if they don't charge, you don't file?

11 MR. BUNCHE: Objection. Now, he's asking the
12 witness whether it's required legally that he file a motion to
13 approve the retention of Prime and Regis.

14 THE COURT: I think the question was simpler. Have
15 you filed a motion?

16 THE WITNESS: No.

17 THE COURT: That's a fact question.

18 Q. Have you filed a motion to retain Regis Property
19 Management as the property manager?

20 A. No.

21 Q. And this success fee that you hope to get, is there any
22 type of a motion that you filed with the Court seeking approval
23 of a success fee along the lines of what you described?

24 A. No.

25 Q. Now, you office with Danny Moos, who is the principal of

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HC 01111

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1 Transcontinental and the transferor entities, correct?

2 A. Right.

3 Q. You also, I believe, office with Mr. Akin, who is one of
4 the principals at FRE Real Estate, correct?

5 A. Mr. Akin is in the next door. He's in the building
6 adjacent to me.

7 Q. So it's either 1800 Valley View or 1750 Valley View,
8 correct?

9 A. Yes.

10 Q. And they came to your office on December 23, 2010, did
11 they not?

12 A. Yes.

13 Q. And they said to you, we think we've got a project for
14 you, didn't they?

15 A. They said we wanted you to take a look at the structure of
16 this project, yes.

17 Q. And by the way, the -- is Mr. Gene Phillips related in any
18 way to Transcontinental?

19 A. I don't know the relationship there.

20 Q. But you've known Mr. Gene Phillips, for what, about thirty
21 years now?

22 A. Yes.

23 Q. And did you not also get involved in some type of
24 restructuring work related to South Park, which was run by Mr.
25 Phillips?

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1 A. No.

2 Q. What was your connection to South Park?

3 A. I was president of the shopping center division.

4 Q. And you didn't know who was the ultimate owner of South
5 Park then, or did you --

6 A. Oh, I knew he was the majority shareholder, yes.

7 Q. So they came to your office and they asked you, did they
8 not, if you'd be comfortable with various transactions,
9 correct?

10 A. They asked me to look at the schedule and see if I'd be
11 comfortable doing the restructuring, yes.

12 Q. And would you assume the role as the chief restructuring
13 officer of the debtor, correct?

14 A. That word was never mentioned. That was a title I gave to
15 myself, basically to be the vice president and to supervise the
16 transactions.

17 Q. And how many years have you known Mr. Moos?

18 A. I don't know how long. Maybe four years.

19 Q. And how many years have you known Mr. Akin?

20 A. About thirty-five, forty years.

21 Q. And Mr. Shumate, he's also in the management, is he not,
22 of FRE and the other ABCLD --

23 A. He's an officer. But he's been retired for quite some
24 time.

25 Q. How many years have you known Mr. Shumate?

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1 A. About thirty years.

2 Q. Now, did they tell you that these transfers had already
3 occurred from the transferor entities into FRE?

4 A. No.

5 Q. Did they describe to you that there were various transfers
6 made into FRE?

7 A. That was a schedule that was given to me. I wasn't aware
8 that it actually happened at the time. That was the schedule
9 that was given to me, what would be part of the overall plan,
10 yeah.

11 Q. And so they handed you this spreadsheet listing all the
12 properties, correct?

13 A. Right.

14 Q. If you would hold on one moment, let me get you that
15 spreadsheet to refresh your recollection.

16 A. Sure.

17 Q. Just a moment.

18 (Pause)

19 Q. Mr. Morgan, you've got two notebooks in front of you. Let
20 me, if I may, help me get to depos -- the Exhibit number 168.

21 (Pause)

22 Q. Sir, this sheet that they showed to you, it showed the
23 sales prices for each of the transfers or for the sales by the
24 transferor or selling entity to FRE Real Estate, correct?

25 A. Correct.

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1 Q. And that's listed in this whole chart, if you will, or the
2 column that lists the sales price, correct?

3 A. Right.

4 MR. BUNCHER: Your Honor, if we're going to examine
5 the witness, I think the exhibit needs to be offered and
6 admitted.

7 Q. You're familiar with the spreadsheet, and this is true and
8 correct?

9 A. Yes.

10 MR. WEITMAN: Your Honor, I'd ask that 168 be
11 admitted.

12 THE COURT: Any objection?

13 MR. BUNCHER: No, Your Honor.

14 THE COURT: It's admitted.

15 (Wells Fargo Exhibit 168, schedule of transfers, was hereby
16 received into evidence as of this date.)

17 Q. There's also a column for the debt assumed by the buyer.
18 Is that referring to FRE Real Estate?

19 A. Yes, sir.

20 Q. Is this a listing of the secured debt that would be
21 assumed?

22 A. Yes.

23 Q. And that would be including Wells Fargo Finance -- Capital
24 Finance's secured debt, correct?

25 A. You're right. In one of these groupings, yes.

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1 Q. Is that within what we'll call the TCI Land Portfolio II,
2 which is about maybe three or four inches from the bottom?

3 A. Yes.

4 Q. And then it also refers on the far right to what we've
5 been calling the seller notes, correct?

6 A. Yes.

7 Q. And these are the notes that would be issued by the buyer,
8 correct?

9 A. Yes.

10 Q. But to the seller, which total roughly forty-eight to
11 fifty million dollars, correct?

12 A. In total, yes.

13 Q. In total. Now, did you not testify that you thought that
14 these seller notes represented, in some manner, the perceived
15 value after the secured and unsecured debt as to each of these
16 properties?

17 A. No.

18 Q. Okay. What does that represent, in your view?

19 A. In looking at it, it seemed to be that they were
20 transferred, very similar to the book value that was being
21 shown on the transferor's books.

22 Q. And help the Court and the rest of us understand, what do
23 you mean by "book value"?

24 A. There was a separate column, not on this list, that showed
25 what the actual book value was of the -- of the asset.

Richard Morgan - Direct (Wells Fargo)

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1 Q. So Income Opportunity Realty disbursed money, if you will.

2 Is that publicly traded?

3 A. Yes.

4 Q. Is Transcontinental Realty Investors Inc. --

5 A. Yes.

6 Q. -- publicly traded?

7 A. Yes.

8 Q. Is American Realty Investors publicly traded?

9 A. Yes.

10 Q. So your view was that these represented the basis of their
11 investments in each of these properties?

12 A. Not totally. The Amoco Building was different because the
13 Amoco Building had very little book value, and yet it had
14 considerable debt.

15 Q. And you didn't look at any appraisals, correct?

16 A. No.

17 Q. And --

18 A. You mean initially, now?

19 Q. -- well, I mean, when you looked at this chart, did you
20 also ask to see appraisals?

21 A. No.

22 Q. So if the aggregate amount of these seller notes is forty-
23 eight or fifty million dollars, you're not suggesting to this
24 Court that that, in fact, represents the equity in all of these
25 properties, is it?

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HC 01117

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1 A. I'm considering that the equity is more than that.

2 Q. I'm sorry?

3 A. I think the equity is more than the seller notes.

4 Q. So it's more than the basis in the properties?

5 A. Yes.

6 Q. But you have no training in appraising property, correct?

7 A. I have training in buying properties, which has to use the
8 appraisal process.

9 Q. But you have no degree or certifications as an appraiser,
10 correct?

11 A. That's correct.

12 Q. And you've just been in the buying and selling of real
13 estate business for --

14 A. Forty years.

15 Q. -- forty years. Did you look at any of the underlying
16 loan documents when Mr. Moos, on behalf of Transcontinental and
17 the other entities -- the transferor entities -- and Mr. Akin
18 on behalf of FRE, told you about these transactions?

19 A. No.

20 Q. So the various lenders that have been here -- I saw Wells
21 Fargo -- you didn't look to see whether these transfers were
22 permitted under the loan documents, correct?

23 A. Correct.

24 Q. And the same for Armed Forces Bank, that transfer, was it
25 consistent with their loan docs? Was it permissible?

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1 A. I didn't look at that, no.

2 Q. And that would be the same for every single piece of
3 property subject to a secured lender's liens, correct?

4 A. Correct.

5 Q. You didn't know whether there were consents by these
6 secured lenders to these transfers, correct?

7 A. Correct.

8 Q. You didn't ask, did you?

9 A. No.

10 (Pause)

11 Q. Now, we've been talking about these various transactions
12 whereby the debtor transferred -- excuse me -- where the debtor
13 received transfers of all these properties, subject to the
14 secured debt, correct?

15 A. Yes.

16 Q. And there were a number of different, if you will,
17 transaction documents involved in each of these transfers. Was
18 there not?

19 A. Yes.

20 Q. Was there a purchase agreement that was executed in each
21 case by the transferor entity?

22 A. I believe so.

23 Q. Was there also a note issued by FRE in favor of the
24 transferring entity?

25 A. I believe so.

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1 Q. Was there also a distribution agreement by which the notes
2 that were received by the transferor entities were then
3 transferred to the parent of the transferor entity?

4 A. I've already -- no. I don't know anything about that.

5 Q. They didn't share that with you on December 23, 2010, did
6 they?

7 A. No.

8 Q. Did they tell you that not only would those notes be
9 transferred up to the parent of each of these transferor
10 entities, but also the ownership interest in the transferor
11 entities would be transferred to ABCLD Income? Did they tell
12 you that?

13 A. It's outside the scope of what I was doing, but no.

14 Q. And you didn't ask?

15 A. It's not my business to ask.

16 Q. Why isn't it your business to ask?

17 A. Because that has to do with the transferor, not me.

18 Q. And the notes that were issued, roughly forty-eight
19 million dollars, you didn't think it was important to know who
20 were the holders of the notes after those assignments?

21 A. I didn't know the assignments were being made.

22 Q. Well, you know about -- we took your deposition --

23 A. Yes.

24 Q. -- on January 27, 2011, correct?

25 A. Correct.

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1 Q. Have you since gone back to look at all of these operative
2 documents to see what transfers occurred?

3 A. No.

4 Q. Now, I believe it was your testimony on January 27th when
5 I deposed you, that you looked at the notes and the purchase
6 agreements, correct?

7 A. I said I looked at one.

8 Q. One?

9 MR. BUNCHER: I'm sorry. I'm going to object to the
10 form of the question with the preface, concerning his
11 deposition testimony. It's improper to refer to his deposition
12 testimony in the question like that. If he wants to impeach
13 the witness with his depositions, that's fine. But I object to
14 the form.

15 THE COURT: Sustained.

16 Q. Isn't it true that you did look at a representative note
17 and a representative purchase agreement?

18 A. I just said that I did.

19 Q. You did?

20 A. I did.

21 Q. And you had concerns with the amount of the debt and
22 whether it could be adjusted, correct?

23 A. I had concerns with the purchase note, could it be
24 adjusted, yes.

25 Q. Did you know then who your counsel was for FRE Real

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1 Estate?

2 A. No.

3 Q. But yet you knew that Jay LaJone drafted all the
4 documents, correct?

5 A. Yes.

6 Q. So did you just get on the phone with Jay LaJone and ask
7 him to -- and discuss this with him?

8 A. I raised a question to Mr. Crown first.

9 Q. I'm sorry, Mr. Crown is?

10 A. Greg Crown.

11 Q. Of Prime Income?

12 A. Yes. And then he and I got on the phone and talked to Mr.
13 LaJone.

14 THE COURT: With Mr. whom?

15 THE WITNESS: LaJone. Jay LaJone, L-A-J-O-N-E.

16 THE COURT: Thank you.

17 Q. And is he with the same law firm that represents TCI Texas
18 Properties?

19 A. His firm does work for it. I don't know how much, but
20 yes.

21 Q. And you got on the phone with Mr. LaJone and what did he
22 tell you with respect to making these adjustments to the
23 purchase price?

24 A. There was language in the purchase contract that, in my
25 opinion, allowed me to have the ability to adjust the note

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1 based on the outcome and the assets and the other findings that
2 I knew at the time. And the question was what rules? And he
3 said as far as I'm concerned, the purchase contract rules.

4 Q. Would you please -- excuse me. Would you move to Exhibit
5 10, please?

6 MR. WEITMAN: Your Honor, these have already been
7 shown to debtors' counsel.

8 THE COURT: All right.

9 MR. WEITMAN: I'd move for the admission of
10 exhibits -- Mr. Brown tells me -- 5 through --

11 MR. BROWN: 5 through 165, with the exception of 7.

12 THE COURT: So Exhibits 5, 6, and then 8 through
13 one --

14 MR. BROWN: -- sixty-five.

15 THE COURT: -- sixty-five. Any objection to those
16 exhibits?

17 MR. BUNCHER: One second, Your Honor.

18 THE COURT: Of course.

19 MR. BUNCHER: These are just the transaction
20 documents. Is that correct?

21 MR. WEITMAN: That's correct.

22 MR. BUNCHER: We don't have any objection to the
23 purchase agreements, distribution agreements, notes and deeds
24 of trust, if that's what we're talking about in all these
25 exhibits. We have no objection.

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1 THE COURT: Very well. Exhibit 5, 6, and 8 through
2 165 are all admitted.

3 (Wells Fargo Exhibits 5, 6, and 8 through 165, transaction
4 documents, were hereby received into evidence as of this date.)

5 BY MR. WEITMAN:

6 Q. Now, Mr. Morgan, if you'd look at Exhibit 10, this
7 purchase agreement, this is the purchase agreement by which
8 Fenton Real Estate ended up acquiring the real estate of TCI
9 Texas Properties LLC. Is that correct?

10 A. Yes.

11 Q. Can you help us understand what language it was that you
12 were asking be fixed so that you would be able to adjust this
13 purchase price?

14 MR. BUNCHER: Object to the question. Misstates the
15 prior testimony.

16 THE COURT: Overruled.

17 A. The one sentence that I read in the contract was the --
18 the note -- starting with "The note," on the end, "shall be
19 adjusted to an amount equal to the difference between the
20 purchase price and the property obligations as of the effective
21 date."

22 Q. I'm sorry. That's the last sentence of section --

23 A. The last sentence --

24 Q. -- 1.3?

25 A. -- yes, sir.

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1 Q. And it was your view that that meant that it ought to be
2 subordinated to all of the secured debt and unsecured debt from
3 all of the nineteen entities and the debtor in this chapter
4 proceeding?

5 A. That was a subsequent understanding.

6 THE COURT: I'm sorry. Tell me what the sentence is
7 again?

8 THE WITNESS: It was a subsequent understanding. You
9 know, the --

10 THE COURT: No, I understood that. But what sentence
11 are we looking at?

12 THE WITNESS: Oh, I'm sorry. We're looking at the
13 last -- starting with "The note" -- on the bottom of the page
14 at 1.3, carrying over into the second page.

15 THE COURT: All right. Thank you.

16 Q. Are you familiar with the fact that in each case, the
17 transferor entity executed a general warranty deed in favor of
18 the debtor, effective as of December 23, 2010?

19 A. You mentioned the word "general". I didn't remember that.
20 But, yes.

21 Q. Are you aware of the fact that in each case there was a
22 seller note -- if you would, take a look at Exhibit 11, please?
23 This is the note with the debtor in favor of TCI Texas
24 Properties, correct?

25 A. Yes.

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1 Q. And that's for roughly 15.5 million dollars?

2 A. Yes.

3 Q. And in each one of these transfers, was there a similar
4 note executed by the debtor?

5 A. Correct.

6 Q. Do you know whether these documents were actually executed
7 on December 23 or some other date?

8 A. I do not.

9 Q. But we know that these were to be considered effective as
10 of December 23, 2010, correct?

11 A. Right.

12 Q. If you would, take a look at Exhibit 13, please? This is
13 a distribution agreement by which -- well, TCI Texas Properties
14 would assign that note that we just discussed to its parent
15 company. Have you seen this before?

16 A. No.

17 Q. We covered this subject at the deposition. Have you since
18 looked at it?

19 A. No.

20 Q. And if you were to go through all of these other exhibits,
21 these are all of the various other operative documents in
22 connection with these transfers. Are you aware of that?

23 MR. BUNCHER: I'm going to object. The witness --
24 unless he wants the witness to go through the 165 exhibits --

25 THE COURT: Sustained.

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- 1 MR. BUNCHER: -- the documents are what they are.
- 2 Q. Are you familiar with the other lenders who are also
- 3 asserting that this was a bad-faith filing?
- 4 A. I'm familiar there are other lenders.
- 5 Q. Have you read the pleadings?
- 6 A. Pardon?
- 7 Q. Have you read the pleadings that have been filed?
- 8 A. Not totally. I saw the general -- various people been
- 9 filing, but.
- 10 Q. You're aware of the fact that Wells Fargo is owed roughly
- 11 8.2 million dollars. Is that correct?
- 12 A. Yes.
- 13 Q. And are you also aware that RMR Investments also supports
- 14 the dismissal?
- 15 A. I haven't gotten involved in those details.
- 16 Q. Are you aware that it's owed roughly 7.2 million dollars?
- 17 A. RMR?
- 18 Q. Yes.
- 19 A. I have a schedule I'd have to refer to, but --
- 20 Q. Petra Mortgage that has the Amoco Building, have you
- 21 studied their pleadings?
- 22 A. No.
- 23 Q. Are you aware that they supported dismissal of this case?
- 24 A. As I told you, I haven't paid attention to the various
- 25 legal maneuverings.

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1 Q. And are you aware that they're owed roughly 18.9 million
2 dollars?

3 A. I remember 19 million, but in that range.

4 Q. Armed forces bank, are you aware that they also seek the
5 dismissal of this case?

6 A. I don't mean to be flippant, but I've told you I haven't
7 reviewed any of them, so.

8 Q. But you're not even aware of the fact -- Mr. -- excuse me,
9 of Armed Forces Bank wanting the case dismissed?

10 A. I saw some various documentations, but I didn't read them,
11 no.

12 Q. And American Bank of Commerce, are you aware that they
13 support the dismissal or the annulment of the automatic stay?

14 A. The same, sir.

15 Q. And First Bank and Trust, same answer?

16 A. Yes.

17 Q. Are you aware also that Sydney Wicks Revocable Trust, an
18 unsecured creditor, recently asked that this case be dismissed
19 for bad-faith filing?

20 A. I saw an e-mail regarding their coming into the fray. I
21 didn't know what that meant.

22 Q. And then State Bank of Texas, they want the case
23 dismissed, correct?

24 A. I don't know, sir.

25 Q. Are you aware that NexBank with about sixty-one million

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1 dollars, has asserted that all these actions constitute bad
2 faith?

3 A. I haven't read the documents.

4 Q. And you are aware, are you not, because you -- pardon me.
5 Did you sign the schedules of assets and liabilities and
6 statement of financial affairs?

7 A. Yes.

8 Q. So you are aware that there were numerous foreclosure
9 proceedings that were to occur on January 4, 2011, correct?

10 A. Yes.

11 Q. And you're aware, are you not, that by reason of -- pardon
12 me. You signed also the petition in bankruptcy for FRE Real
13 Estate, correct?

14 A. Right.

15 Q. You are aware that the effect of the filing stayed any
16 action for these secured creditors to foreclose on their
17 property, correct?

18 MR. BUNCHER: Objection, calls for a legal
19 conclusion.

20 THE COURT: Sustained.

21 Q. Now, we talked about this previously, but I'll ask you now
22 today, you have no funding in order to pay to preserve, protect
23 the raw land properties, correct?

24 A. Do I have a commitment for it? No.

25 Q. And there is nothing that isn't subject to existing liens

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1 with respect to cash flows from the operating properties,
2 correct?

3 MR. BUNCHER: Objection, legal conclusion, Your
4 Honor.

5 THE COURT: Sustained.

6 Q. Are you familiar with the operating properties?

7 A. Yes.

8 Q. And the cash flow generated from those properties?

9 A. Yes.

10 Q. Do they provide any excess -- excuse me. Do you know if
11 those lenders have consented to use of cash collateral for you
12 to fund preservation costs for the other raw land?

13 A. I don't think I've requested that, sir.

14 Q. Do you have any commitment from the parent of FRE Real
15 Estate to fund this case or these other costs to maintain and
16 protect the raw land properties?

17 A. Not at this time, no.

18 Q. Do you have any commitment from Transcontinental, American
19 Realty, or Income Opportunity to fund those types of costs?

20 A. Not a commitment at this time. They obviously are the
21 most likely candidates, if I can't find another investor.

22 Q. So you really don't have any financial support for -- in
23 order to keep this case going or maintaining the raw land,
24 subject to the liens of the lenders, correct?

25 A. No, that's not correct. You asked me had I had

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1 commitments. I don't have commitments. Will I have financial
2 support? I believe I will.

3 Q. But you didn't have it at the time you went into
4 bankruptcy, correct?

5 A. That's correct.

6 Q. And you had no available working line or commitment going
7 into these Chapter proceedings, correct?

8 A. For?

9 Q. The raw land properties?

10 A. No.

11 Q. In fact, I think when I asked you about what you were
12 going to do in this case, you said you're either the fixer or
13 the mechanic or both, correct?

14 MR. BUNCHER: Again, I'm going to object. I think
15 he's referring back to deposition, and I object to the form of
16 the question.

17 THE COURT: Sustained.

18 Q. Is it your intention to create value for these properties
19 by finding new tenants?

20 A. Are we talking about two different things? Properties and
21 land.

22 Q. The income producing properties?

23 A. Yes.

24 Q. Are you aware of whether, with respect to the raw land,
25 any efforts were made in the last several years to market and

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1 sell those properties?

2 A. I wasn't familiar with those pieces as to what was going
3 on with the marketing. I knew the parcels themselves, but I
4 didn't know what was going on with marketing.

5 Q. So you didn't inquire from anyone as to the previous
6 efforts to market and sell the real estate?

7 A. No. It's pretty obvious that land sales have been dried
8 up, you know, in a lot of place. But no, I didn't go
9 specifically property-by-property.

10 Q. And is it true that the only offer that's been received in
11 two or three years with respect to the Wells Fargo collateral,
12 has been 6.2 million dollars for all the real estate?

13 A. No, I'm not aware of that.

14 MR. WEITMAN: Can I have just a moment, Your Honor?

15 THE COURT: Of course.

16 (Pause)

17 Q. With respect to the Wells Fargo collateral, do you know if
18 the 2010 taxes have been paid?

19 A. I don't think so, but that's not -- whatever it is, is
20 revealed on the schedule.

21 Q. Are you familiar with a company called Propel Financial
22 Services?

23 A. Yes.

24 Q. And did they finance ad valorem taxes?

25 A. I'm not sure exactly how that works. I know that there's

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1 been some cases where Propel is a debtor (sic) on the tax -- on
2 the -- listed on the schedule.

3 Q. Do you know if they financed the 2009 taxes owing against
4 the real estate that's been pledged to Wells Fargo?

5 A. I don't recall.

6 (Pause)

7 Q. Is it your contention that this case can stay in Chapter
8 proceedings because there's fifty million dollars of equity in
9 all these properties?

10 MR. BUNCHE: Objection, to the extent the questions
11 calls for -- it's what the legal contentions of his counsel are
12 asserting in this matter, Your Honor.

13 THE COURT: Sustained.

14 Q. Do you know how these Chapter proceedings -- excuse me.
15 Do you know how you intend to reorganize these companies or
16 this company?

17 A. In a step-by-step basis?

18 Q. Yes.

19 A. Yes, I do.

20 Q. Could you briefly describe that to the Court?

21 A. The first thing I focused on, of course, is income
22 producing properties. And that's where the cash flow is right
23 now, and that's where I see the fastest exit -- or I mean, the
24 fastest creation of value. I can go through them individually,
25 if you'd like, but --

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1 Q. No, just in general.

2 A. -- okay. The land is another issue. And of course, the
3 land is a -- has to be a program. It quite candidly has to be
4 a program that is myself sitting down with all the lenders in
5 this group, because each of you have collateral that could very
6 well be next door to the other person's collateral. So there
7 needs to be some type of concerted marketing effort with a
8 third party, in order to market these properties in the best
9 manner, to be sure that, for example, you don't have a broker
10 on one piece of land, and then two doors over, another broker
11 has that piece of land. And I'm prepared to sit down --

12 Q. But you're not aware --

13 A. -- pardon?

14 Q. -- pardon me. You're not aware of whether these
15 properties have been marketed and listed with brokers for
16 several years before you even came on board?

17 A. There may have been some. I'm not aware of that. My
18 point is that -- is that if we're going to hire third-party
19 brokers to market the land, then we need to do in a concentric
20 manner, so that one broker can represent a particular area as
21 opposed to having four brokers on -- step side by side on a
22 piece of piece of property.

23 Q. Any other way to reorganize this company?

24 A. Well, the first, of course, is to get the income
25 properties up; get them up and hopefully sell them. If we sell

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1 them, that's going to create value for the debtor. That stays
2 in the debtor.

3 Q. Is there any money out there to refinance these
4 properties?

5 A. You don't refinance properties that refinancing -- there
6 is property for refinancing properties if the income stream is
7 up. And that's what I'm trying to do is get the income stream
8 up so it would justify refinancing.

9 Q. And you've been on the job since December 23?

10 A. Yes.

11 Q. And you are going to use, are you not, the services of
12 Prime Income, that's been on the job for years, correct?

13 A. For what purpose, sir?

14 Q. Did you not -- excuse me. Isn't it your view that you're
15 going use the various services that Prime has internally to
16 help you with marketing and selling these properties?

17 A. We need to get the properties segregated. Can we do that?
18 Can we segregate income properties and land separately?

19 Q. Do so then. Explain.

20 A. Okay. Good. From an income property standpoint, Regis
21 Property Management is the property manager. But in call
22 cases, they are listed with third-party brokers who do do the
23 leasing. So from the standpoint -- I looked at the leasing
24 people who they had. Third-party Grubb & Ellis worked
25 excellent -- I think they're doing an excellent job. And so

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1 I'm looking to a third-party broker to create the deals and I'm
2 looking to Regis to do the day-to-day management.

3 Q. But you have no extra dollars around in order to support
4 the raw land properties, correct?

5 A. Now, we're going to the raw land properties. Okay. On
6 the raw land properties, you don't need dollars to support
7 them. What you need is customers to buy them. And in the
8 process of trying to do that, we're trying to find a
9 methodology to market it so that it makes a concerted effort in
10 marketing.

11 Q. But Grubb & Ellis has been trying to market and sell it
12 previously, correct?

13 A. Maybe so. But I have -- I've already produced one
14 contract to American Bank of Trust -- American Bank of Commerce
15 for acquisition. So that was not known to anybody at that time
16 -- at the time it was filing. I have another offer came in
17 this morning on NexBank -- on the NexBank property.

18 Q. And are those offers consistent with the "equity" in each
19 of these properties?

20 A. Actually above.

21 Q. Okay.

22 A. That's not -- I stated that incorrectly. The ABC Bank is
23 above The NexBank, I don't know what the -- I haven't analyzed
24 the equity on that. I know what the offer is, but I haven't
25 analyzed how it relates to the note. I know it's an extra

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1 collateral. It's one of those properties that you mentioned
2 earlier and that has no debt. And yet, it is part of the
3 bankruptcy. And it's because it's cross-collateralized with
4 NexBank's note.

5 Q. In terms of serving as a chief restructuring officer, have
6 you ever served as a chief restructuring officer before?

7 A. Not in this capacity, no.

8 Q. And you're not getting paid, correct?

9 A. Not on a daily basis, no.

10 Q. And you're -- you haven't made any inquiries as to the
11 other subjects that we've talked about: the distributions and
12 upstreaming of the notes, correct?

13 MR. BUNCHER: Repetitive, Your Honor.

14 THE COURT: Sustained.

15 Q. Are you aware of the fiduciary obligations that a chief
16 restructuring officer and vice president of the debtor has?

17 A. Very much so.

18 Q. Are you aware of the fact that you have a duty to
19 investigate?

20 A. You're asking about various and sundry things. Do I have
21 an obligation to investigate what the seller's transferor
22 transferred their notes to another entity? I don't know. I
23 would have no way of knowing that. That's getting into inside
24 information to a public company. And I don't want to know.

25 MR. WEITMAN: All right. Pass the witness.

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1 THE COURT: Very well. Mr. Aurzada?

2 MR. AURZADA: Yes, Your Honor. I suspect my cross-
3 examination will be fifteen minutes. Would the Court want me
4 to go forward, or do you want to take a break at this point?
5 We've been going for two hours.

6 THE COURT: Does anybody need a break? All right.

7 MR. AURZADA: I assume everyone raised their hand.

8 THE COURT: No, just Mr. Buncher did. Apparently --

9 MR. BUNCHER: I had too many glasses of water, Your
10 Honor.

11 THE COURT: All right. Let's take a short recess.
12 I'd like to keep moving, so let's say five minutes.

13 THE CLERK: All rise.

14 (Recess from 2:04 p.m. until 2:09 p.m.)

15 THE CLERK: All rise.

16 THE COURT: Be seated, please. Okay. All right.

17 MR. AURZADA: Your Honor, during the break, I took
18 the liberty of approaching and putting my witness -- exhibit
19 list on the bench.

20 THE COURT: I saw.

21 UNIDENTIFIED SPEAKER: Sorry, Your Honor.

22 THE COURT: No problem. All right, Mr. Aurzada?

23 MR. AURZADA: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. AURZADA:

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1 Q. Good afternoon, Mr. Morgan.

2 A. Yes, sir.

3 Q. My name is Keith Aurzada, and I represent Armed Forces
4 Bank today.

5 A. Yes, sir.

6 Q. I think we've met before, but it's been a long time,
7 hasn't it?

8 A. I don't remember meeting you before.

9 Q. Okay. All right. Well, I remember meeting you.

10 A. Okay.

11 Q. I have placed in front of you -- and it's the one standing
12 up on its end -- a binder with exhibits. It's standing on its
13 end.

14 A. Here?

15 Q. Yeah.

16 A. Okay.

17 Q. Would you mind turning that to Exhibit 7?

18 THE COURT: All right. We're going to have a problem
19 because we've got duplicate exhibits.

20 MR. AURZADA: I was concerned about that. May I
21 refer to it as Armed Forces Exhibit 7?

22 THE COURT: You may. You may.

23 Q. So, Mr. Morgan, when we're looking at Exhibits, I'm going
24 to try to refer to them as Armed Forces Exhibit and then the
25 number. And if I am mistaken and forget, please feel free to

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1 correct me.

2 So do you recognize Armed Forces Exhibit number 7?

3 A. Maybe I'm looking at the wrong thing. I see "vendor name"
4 and "address" and -- is this the one you're talking about?

5 Q. Yes, sir.

6 A. I don't recognize the document, no.

7 Q. You do not?

8 A. No.

9 Q. You don't recognize it?

10 A. No.

11 Q. You don't recognize this as an exhibit which shows the
12 unsecured debt by property --

13 A. Oh, wait, just like the formatting in which you submitted
14 it.

15 Q. I'm sorry, I didn't understand you.

16 A. I don't recognize this as being -- this looks like a copy
17 of a copy of a copy. And I didn't know what we're talking
18 about.

19 Q. Okay.

20 A. If this is an exhibit that's been submitted as far as
21 filings were concerned, I can go to that and look at it. But
22 go ahead.

23 MR. BUNCHER: Your Honor, we'll acknowledge this is
24 an exhibit we prepared -- the debtor prepared of the unsecured
25 debt associated with each of the properties that were

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1 transferred.

2 MR. AURZADA: Your Honor, with that, I'd move for the
3 admission of Armed Forces Exhibit 7.

4 THE COURT: Any objection?

5 MR. BUNCHER: No, Your Honor.

6 THE COURT: It's admitted.

7 (Armed Forces Exhibit 7, unsecured debt associated with each
8 transferred property document, was hereby received into
9 evidence as of this date.)

10 Q. May I also get you, Mr. Morgan, to turn to Armed Forces
11 Exhibit 4?

12 (Pause)

13 Q. Does Exhibit 4 appear to be the schedules and statements
14 of financial affairs filed by the debtor in this case?

15 A. I'm not familiar -- Mr. Crown provided most of the
16 exhibits, so I may not be able to testify to the specific
17 details of it, so.

18 Q. Okay.

19 MR. AURZADA: Your Honor, I really just want to admit
20 the schedules and statements. I believe we can take judicial
21 notice and I'll see if the debtor has any objection to their
22 admission?

23 THE COURT: Any objection?

24 MR. BUNCHER: Your Honor, Exhibit G to the debtor's
25 exhibits is also -- or F and G were the schedule and statement

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1 of financial affairs. I have no problem with them being
2 admitted. But I haven't compared page by page. There's many
3 pages. But subject to that, if they're complete copies, I have
4 no objection.

5 THE COURT: Very well.

6 MR. AURZADA: I believe they are, Your Honor.

7 THE COURT: All right. They are admitted.

8 (Armed Forces Exhibit 4, schedules and statement of financial
9 affairs of debtor, were hereby received in evidence as of this
10 date.)

11 MR. AURZADA: Thank you.

12 Q. So, Mr. Morgan, as I understand it, FRE, the debtor,
13 doesn't have any employees. Is that right?

14 A. Except me, you mean?

15 Q. Except you?

16 A. Yes.

17 Q. Okay. But it owns at least nineteen parcels of property.
18 Is that right?

19 A. Right.

20 Q. Valued in the hundreds of millions?

21 A. Well, that may be a loose term. We probably need to go
22 back to the schedules and see what the value of the properties
23 are.

24 Q. If I represented to you that it schedules hundreds of
25 millions of dollars in assets, would you be surprised?

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1 A. Well, I'm telling you the that the total -- obviously the
2 total did. You break it down by land and commercial
3 properties, I'm not sure what the breakdown is.

4 Q. I'm not even asking for the breakdown. Let's just look at
5 the summary page. Am I incorrect in saying that FRE has
6 \$243,553,624.21 of scheduled assets?

7 A. I think you transposed the number.

8 Q. Oh, did I?

9 A. I see 234, but that's okay. You said 243; I see 234.
10 You're right. Down at the bottom, 243.

11 Q. Okay. And yet, you're the only employee?

12 A. Yes.

13 Q. That's a big job. Let me ask you this. Have you been to
14 every single one of these properties?

15 A. I've been to -- I have not been to the Amoco Building yet.
16 And I have not seen the -- some 2,500 acres, plus or minus,
17 that is the collateral for the Wells Fargo. Other than that, I
18 know the properties.

19 Q. Okay. And how do you know that? Did you learn all that
20 between December 23rd and today, or did you know that from some
21 other time period?

22 A. I really knew it from other involvement. I have -- as the
23 manager, if you will, of the energy division -- which is what I
24 really do; I really run an oil and gas company. And as the
25 manager of that, I had gotten involved in developing a Barnett

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1 Shale play, and in and around Mercer Crossing as a nucleus of
2 that. And that entity was -- that was spurred by a group
3 called -- an entity called ATI Mineral Holdings, which was
4 combined then with the Transcontinental, American Realty and
5 Income Opportunity Realty Trust. All of them mineral leases
6 were put into one pool and I used that as a nucleus, then, to
7 spread out.

8 Subsequently negotiated a joint venture with Keystone
9 Exploration out of Forth Worth. And under that concept, we
10 developed about -- tied up about 12,000 acres of mineral
11 leases. And in the process of doing that, I had to select
12 drill sites, and in the process of doing that, determine what
13 some of these properties were worth in exchange. So do I give
14 a drill site here; do I give a drill site there? And I became
15 aware, at least where the properties were -- the properties,
16 you know, if there were any problems with them, access
17 problems, and became fairly familiar with most of the land
18 parcels at that time.

19 Q. So you're not new to these properties at all?

20 A. No.

21 Q. Is that right? So you wouldn't be considered new
22 management?

23 A. I would be considered new management in the sense that
24 I've never had any specific responsibility for the management,
25 control or marketing of those properties.

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1 Q. Mr. Weitman -- you confirmed for him that you had no
2 committed capital for the debtors. I want to clear up a couple
3 other things. You don't have any -- presently any letters of
4 intent to purchase the raw land owned by the debtor. Is that
5 correct?

6 A. I do.

7 Q. You do have a letter of intent?

8 A. Actually, I have better than that. I just -- I submitted
9 a contract to American Bank -- ABC Bank this week, for the
10 Temple land, ten point something acres, down in Temple, Texas.
11 That actually was a contract that was already there --

12 Q. That's what you mentioned to Mr. Weitman --

13 A. Yes.

14 Q. -- previously, right?

15 A. Um-hmm.

16 Q. How about for Armed Forces?

17 A. Armed Forces, I'll have to go back and look at your
18 pieces. I don't have any specific working for that I know of
19 on your particular parcels.

20 Q. Now, the debtor has not filed a plan of reorganization,
21 correct?

22 A. No.

23 Q. The debtor has not filed a disclosure statement, correct?

24 A. I didn't understand your question that time.

25 Q. The debtor has not filed a disclosure statement, correct?

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1 A. In what sense do you mean?

2 Q. A disclosure statement to support a plan of
3 reorganization?

4 A. Correct.

5 Q. Now, I want to talk to you a little bit about your success
6 fee. What percentage of the ultimate recovery is that going to
7 be? Do you know?

8 A. I don't really know. The -- it all depends on what the
9 value is. You know, it's -- if things happen quickly, it could
10 be an enormous value. If things take --

11 Q. Who are you going to -- you --

12 MR. BUNCHER: Your Honor, I think the witness should
13 be allowed to answer the question or finish his answer, if he's
14 going to ask him questions.

15 THE COURT: Sustained.

16 MR. AURZADA: Okay.

17 A. The overall value that I'm thinking in terms of for a
18 year's term would be in the 150-, 200,000 dollar range. So
19 I'll adjust the percentage to the success fee according to that
20 range.

21 Q. So you're going to do that on your own?

22 A. Pardon?

23 Q. You're going to do that on your own?

24 A. No. I can do it with Mr. Akin. We've already talked
25 about its --

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1 Q. You're going to do it with who? I didn't hear what you
2 said.

3 A. Mr. Akin.

4 Q. Mr. Akin.

5 A. Who is the owner. It's a floating situation. You never
6 know exactly what assets are going to be there or not be there,
7 what moves quickly, what doesn't move quickly. And right now,
8 I'm just working on the gentlemen's agreement that there will
9 be a success fee if -- if I bring out the debtor whole.

10 Q. Okay. And you're going to get a success fee which is a
11 percentage of a whole, correct?

12 A. That's correct.

13 Q. Okay. Who is the rest of that money going to go to?

14 A. The rest of the money goes to what?

15 Q. To whom? Who will get it?

16 A. Oh, that goes to FRE, which is the -- which is to Mr.
17 Akin's company.

18 Q. And what company is that?

19 A. FRE.

20 Q. Who is going to get it from FRE? It's just going to go to
21 FRE? Where is it going to go? If there's profit, who is it
22 going to go to?

23 A. You're asking me a question I can't answer. If -- I'm
24 saying is the debtor has value after everybody's paid off, then
25 that is what the debtor's value is. Where it goes is not my --

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1 I don't have control of that. It's whoever the owner is
2 decides where it goes after that.

3 Q. Okay. Who's the owner?

4 A. Mr. Akin. ABC Properties, or whatever it is. Mr. Akin
5 and Mr. Shumate.

6 Q. Okay. So I want to evaluate one thing with you there.

7 MR. AURZADA: One moment, Your Honor. I need to make
8 sure I get the exhibit reference --

9 THE COURT: Of course.

10 MR. AURZADA: -- correct here.

11 Q. Okay. I'm going to ask you now to look at Wells Fargo
12 Exhibit number 168. So we're going to have to change binders
13 here.

14 A. Is that that same spreadsheet we were looking at a few
15 minutes ago?

16 Q. No.

17 A. Sorry, are we on Wells Fargo --

18 Q. Wells Fargo 186.

19 A. It was lost in translation here, obviously.

20 MR. AURZADA: Your Honor, may I approach and try to
21 be --

22 THE COURT: You may.

23 MR. AURZADA: -- of assistance?

24 THE WITNESS: That's yours, right? I see -- oh, I
25 see. I have it turned upside down. Okay. Okay.

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1 Q. And can you turn to the second page of Wells Fargo Exhibit
2 168?

3 A. Yes.

4 Q. Okay. And I want to look at the last individual line
5 item. It talks about the property name and information. It
6 says "Mercer Crossing, 257.05 acres in Farmer's Branch, Texas."

7 A. Correct.

8 Q. Is that right? Now, that's a property that is roughly at
9 the intersection of I-35 and I-635, right?

10 A. No.

11 Q. No? Where is it?

12 A. I mean, it's basically -- it's basically in runs partially
13 on Valley View Road. But it is more at the intersection of
14 what is known as Mercer Crossing, which is the Mercer Crossing
15 proper, which is essentially at Luna Road and Valley View. But
16 the general area is 35 and 635, correct.

17 Q. Okay. All right. And it's vacant land, is that right?

18 A. Well, it's vacant land with four lane streets running
19 through it.

20 Q. Are you telling me the debtor owns the streets or?

21 A. No. I'm just telling you, the question is -- vacant land
22 has the connotation of being unimproved property. It is
23 improved by the fact that the sewer, water and streets --

24 Q. It has street frontage, right?

25 A. Yes.

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1 Q. Okay. But it's vacant. There's no building on it?

2 A. That's correct.

3 Q. Okay. Now, this property was transferred to FRE on
4 December 23rd. Is that right?

5 A. Right.

6 Q. December 23rd of 2010?

7 A. Right.

8 Q. Okay. And what was the price of that sale?

9 A. You go back, you mentioned page 2, but I don't think
10 that's on page 2.

11 MR. AURZADA: Your Honor, may I approach the witness
12 and --

13 THE COURT: You may.

14 A. The price is 25,400,000.

15 Q. That was the sales price?

16 A. Yes.

17 Q. Doesn't it actually say 28,400,000?

18 A. If I had my glasses, it might.

19 Q. Okay. Being farsighted myself, I'll probably screw
20 something up here in a minute myself. So the sale price was
21 28.4 million. Is that right?

22 A. Yes.

23 Q. And that was paid how?

24 A. That's paid by assumption of debt and then a note for some
25 250,000. I'll leave that number in.

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1 Q. Okay. And how much debt was assumed?

2 A. If I read it right, 25,139,000--something-something.

3 Q. Okay. 28,139,869. Is that right?

4 A. Okay.

5 Q. Does that sound close?

6 A. Yeah, if the other is 28, that's 28, yeah.

7 Q. Okay. All right. So what I'm asking now is if that
8 property is appraised at 48.1 million, the debtor got quite a
9 deal, didn't it?

10 A. It did.

11 Q. And in fact, that means ART, American Realty Trust, Inc.,
12 a publicly-traded company, transferred 48.1 million dollars of
13 property -- if you consider my appraisal to be valid -- for
14 28,400,000 dollars?

15 A. I've seen the appraisal and I do consider it to be valid.

16 Q. Okay. So do you think the shareholders of American Realty
17 Trust, Inc. would be upset to know that that company
18 transferred to this debtor 48 million dollars of real property
19 for 28.4 million dollars?

20 MR. BUNCHER: Objection, Your Honor, to the form of
21 the question, calling him to speculate on some unknown
22 shareholders who aren't here today.

23 THE COURT: Sustained.

24 Q. Has the debtor considered the likelihood that American
25 Realty Trust has a claim against this debtor for fraudulent

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1 conveyance?

2 MR. BUNCHER: Objection, calls for a legal
3 conclusion.

4 MR. AURZADA: I don't think it does, Your Honor. I
5 think that's just asking him if he's considered that as part of
6 his restructuring strategy.

7 THE COURT: Overruled. I'll allow the witness to
8 answer it.

9 A. And what is your question again?

10 Q. Have you considered the fact that American Realty Trust,
11 Inc. might have a cause of action against this debtor for
12 fraudulent conveyance?

13 A. American Realty Trust board approved it, I'm assuming, in
14 order to make the transfer.

15 Q. I'm asking if you have considered whether they might have
16 a lawsuit for having transferred forty-eight million dollars of
17 real property for only twenty-eight million dollars of
18 consideration?

19 A. Well, if you construe the "they" to be American Realty
20 investors, they were the transferor. They made the transfer.
21 They set the price.

22 Q. That's not very good business sense, is it?

23 A. I don't know. You have to put everything in balance.

24 Q. Who were the directors and officers of ART that authorized
25 that transfer?

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1 A. I have no idea.

2 Q. You don't know?

3 A. No.

4 Q. Did you make inquiry to find out?

5 A. No.

6 Q. So as part of your duties as the chief restructuring
7 officer, you decided to make no effort or no inquiry as to who
8 would approve the transfer?

9 A. If a -- if a transfer is made in a public company of
10 certain sizes, it has to have a board approval. If it's below
11 that, it has management approval. So the very fact it was
12 transferred gives me the author -- gives me the assumption that
13 all the authority to transfer that was made.

14 Q. So you made the assumption that it was an authorized
15 transfer?

16 A. Correct.

17 Q. And so I'm clear, you haven't considered whether or not
18 there would be a lawsuit or a claim made by American Realty
19 Trust for fraudulent conveyance?

20 MR. AURZADA: I know it's a bit repetitive, Your
21 Honor, but I've been trying to summarize this.

22 THE COURT: Okay.

23 A. Well, I don't know. How could someone bring a suit
24 against us for fraudulent conveyance when they themselves
25 conveyed it? I don't understand what you're -- where you're

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1 getting.

2 Q. Well, and forgive me, Mr. Morgan, but that happens all the
3 time for debtors that they make pre-petition transfers and they
4 come to bankruptcy court and they try to get those properties
5 back. There's also a Uniform Fraudulent Conveyance Act that
6 allows them to get that property back. So I'm just asking,
7 have you considered the possibility that there's going to be a
8 lawsuit or a claim made by ART?

9 A. Not even considered, no.

10 Q. Okay. In your opinion, is that something that a chief
11 restructuring officer ought to know, think about, and consider?

12 A. I think I've answered that. If -- I have assumed that the
13 transfer was done with proper authorization and approved by the
14 board or the management people with the -- with that authority.

15 Q. Is Mr. Akin affiliated with American Realty Trust, Inc.?

16 A. Not to my knowledge. Affiliated may be a loose term. He
17 does own a company called Sunchase Management that does manage
18 properties for various entities. And to the extent of American
19 Realty, I don't know.

20 Q. Mr. Akin offices out at Valley View, is that right?

21 A. Yes.

22 Q. Okay, how long have you known him?

23 A. Going back into the Southmark years which would make that
24 around '80 -- '82 -- forty years -- thirty-five to forty years.

25 Q. So a long time. Okay. And so, just so I'm clear on this,

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1 this transfer, to the extent there's a realization of value in
2 excess of the purchase price, you're going to get a piece of
3 that purchase price?

4 A. Globally.

5 Q. Globally. But if we isolated it to one property, you're
6 going to get a success fee based upon whatever value there is
7 on Mercer Crossing above 28.4 million?

8 A. No. If you're isolating it, I can't talk in terms of
9 isolated properties. It's just not over until it's over. And
10 once it's all done, then I'll get a piece of that action.

11 Q. All right, so prior to the filing of this bankruptcy case,
12 did you contact Armed Forces Bank to work out a restructuring?

13 A. No

14 Q. Were you aware that the properties were posted for
15 foreclosure?

16 A. No.

17 Q. Why not?

18 A. I didn't ask the question. You're talking about December
19 23rd?

20 Q. Um-hmm.

21 A. I didn't ask the question.

22 Q. So you're -- on December 23rd, you're the chief
23 restructuring officer; you decide to take the assignment. And
24 you did not ask the question as to whether or not any of these
25 properties were posted for foreclosure?

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1 A. That's correct.

2 Q. The 2009 taxes have not been paid on Armed Forces Bank's
3 collateral, is that right?

4 A. I don't know. Without going to look at some type of
5 schedule, I don't know.

6 Q. Okay. 2010 taxes haven't been paid either, have they?

7 A. Well, there again, you're going to have to give me a time
8 frame reference. As to the '09s, if they weren't paid, they're
9 on a schedule. 2010s, which effectively are due January 31st
10 of 2011, I'm almost sure none of those have been paid with
11 exception that some lender may have escrows for that purpose.

12 Q. When the properties that are secured by Armed Forces liens
13 were transferred to the debtor, you did not obtain the prior
14 consent of Armed Forces Bank, did you?

15 A. Correct.

16 Q. I wanted to go back to one point that you made when
17 talking to Weitman, was talking about you thought the raw land
18 needed to be marketed and sold and sort of, if I can paraphrase
19 it, an orderly manner. Is that right?

20 A. It wasn't orderly manner. What I was pointing out, if you
21 look at your -- Mercer Crossing, for example. Mercer Crossing
22 is a very oddly-shaped piece of property. It was part of the
23 original acquisition, I'm assuming the reason it was named
24 that; it's call the Mercer parcel. But it is tied to other --
25 other properties that are in and around that area, some of

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1 which are in bankruptcy, some are not. It's also close to one
2 of the properties that NexBank has as additional collateral.
3 And the point is, who's going to market Mercer Crossing needs
4 to be somebody that's going to market everything in Mercer
5 Crossing.

6 Q. Okay. So you would disagree with my characterization of
7 that as some orderly process?

8 A. Orderly process would be the manner in which you
9 accomplish it. My comment was how should it be marketed. I
10 think it should be marketed in some type of coordinated effort.

11 Q. My point is to you that there is nothing that would
12 prohibit you from having tried to convince Armed Forces Bank to
13 do that with you before filing this case, is that right?

14 A. That's correct.

15 Q. And in fact, going back to the origination of that loan
16 and the first default a couple years ago, could have talked to
17 the bank about doing that, right?

18 A. I wasn't involved at that time, sir.

19 MR. AURZADA: Your Honor, to try to save some time
20 and to complete my record, I would ask that debtor's counsel
21 review Armed Forces Exhibit 79 through 93. I believe these are
22 the transfer documents. I believe they're true and correct
23 copies, and I'd like to just stipulate to their admissibility.

24 THE COURT: 79 through 103?

25 MR. AURZADA: 93, Your Honor.

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1 THE COURT: 93.

2 MR. AURZADA: Armed Forces Exhibits 79 through 93.

3 THE COURT: Any objection, Mr. Buncher?

4 MR. BUNCHER: One second, Your Honor. No, Your
5 Honor.

6 THE COURT: They're admitted.

7 (Armed Forces Bank's Exhibit 79 to 93, various transfer
8 documents, were hereby received into evidence as of this date.)

9 MR. AURZADA: Nothing further at this time, Your
10 Honor.

11 THE COURT: Very well. Anyone else? Mr. Stromberg?

12 DIRECT EXAMINATION

13 BY MR. STROMBERG:

14 Q. Good afternoon, Mr. Morgan.

15 A. Good afternoon, sir.

16 Q. Going to ask you some questions that you were being asked
17 just a couple of moments ago, my understanding is that you
18 didn't ask about whether or not these properties were posted
19 for foreclosure, right?

20 A. Correct.

21 Q. And you didn't ask about whether or not any of these
22 transfers violated any of the lender's loan documents that
23 would otherwise prohibit the transfer of the properties out of
24 the entities they were in?

25 A. Correct.

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1 Q. And my understanding is also that you didn't actually
2 review any of the loan documents for any of the lenders who had
3 security interests in those properties before they were
4 transferred, right?

5 A. Correct.

6 Q. Or contact any of the lenders regarding whether or not
7 they would approve the transfers?

8 A. Correct.

9 Q. Okay. Did you ask about the status of the loans securing
10 these properties, whether they were in default or not?

11 A. No.

12 Q. You have a lot of experience with real estate, am I right?

13 A. I do.

14 Q. If I remember correctly, over forty years?

15 A. Yes.

16 Q. And that involves Texas real estate, too, does it not?

17 A. It does.

18 Q. You're aware that the January of the year following, taxes
19 for the previous year, ad valorem taxes always come due, right?

20 A. Yes.

21 Q. Okay. Did you inquire as to whether or not any of these
22 properties that were being transferred to the debtor had unpaid
23 ad valorem taxes that would come due on January 31, 2011?

24 A. There was either a schedule or reference, and I'm not
25 sure, but I was aware that most, if not all of the properties,

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1 that the taxes due coming January 31 were not paid.

2 Q. Okay. And not only that, but you were also aware that the
3 debtor entity, collectively, would not have enough money in
4 each of the individual entities that were being folded into the
5 debtor to satisfy the unpaid taxes, correct?

6 A. Correct.

7 Q. Let me talk a little bit about the success fee issue, and
8 I'm batting cleanup, here, so if I repeat, I apologize. You
9 anticipate that a lot of work and energy will probably go into
10 a case involving close to forty income and nonincome-producing
11 properties with almost twenty lenders in it, right?

12 A. Correct.

13 Q. Now, have you ever been a chief restructuring officer in a
14 bankruptcy case before?

15 A. No.

16 Q. But nonetheless, you understand and appreciate that this
17 is going to involve a lot of your time and energy, am I right?

18 A. I do.

19 Q. Without a deal for your compensation, Mr. Morgan, how can
20 you know that you're going to be dealt with fairly by Mr. Akin
21 regards to the success fee you haven't yet negotiated? How do
22 you know?

23 A. It's a man I've known for almost forty years.

24 Q. So you have a belief in Mr. Akin based on that
25 relationship over time that he's going to treat you fairly?

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1 A. I have a belief as follows: Number 1, unless I create
2 enough value so that everybody's paid off and there's something
3 left over, there is nothing. To the extent that I do, the best
4 time to be appreciated is when you put the money in the bank.

5 Q. Right. But my question is about your subsequent
6 negotiation that's yet to occur with Mr. Akin. You are telling
7 this Court, if I understand you correctly, that based on your
8 forty years of experience with Mr. Akin, you believe that he is
9 going to deal with you fairly, as it relates to this success
10 fee, right?

11 A. That's correct.

12 Q. Okay. So if value is generated, that you won't have to
13 worry, as you sit here, now, based on this longstanding
14 relationship, that he won't give you a fair success fee?

15 A. I don't have to worry, anyway. I'm already compensated.
16 This is really just -- use the word gravy. It will be
17 excess -- an additional income for me.

18 Q. When you say you're already compensated, are you referring
19 to compensation from this debtor or from outside?

20 A. Outside.

21 Q. Okay. So you're referring to other things that you do
22 that are unrelated to the debtor?

23 A. Correct.

24 Q. Okay, now am I correct in my understanding that Mr. Akin
25 is an owner of ABCLD, which is the entity that owns the FRE

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1 Real Estate stock?

2 A. That's the way I understand it.

3 Q. Okay. So in order for there to be value, excess value
4 with which to compensate you based on a success fee, is it your
5 understanding that this case has to generate enough money to
6 pay all the secured and unsecured creditors, and then filter
7 additional value down to Mr. Akin's level?

8 A. Exactly.

9 Q. Okay, now, on December 23rd, when you were consulted about
10 taking on this job, Mr. Morgan --

11 A. Yes, sir.

12 Q. It was -- Mr. Akin was one of the two people who came to
13 visit with you about it, am I right?

14 A. Correct.

15 Q. The other person was Danny Moos?

16 A. That's correct.

17 Q. And Mr. Moos has a role in Transcontinental Realty
18 Investors, does he not?

19 A. Right.

20 Q. What is that role?

21 A. He's a president of one of the entities. I'm not sure if
22 he's the president of Transcontinental or not.

23 Q. Okay. Does he have a role at Prime Asset?

24 A. Yes, I believe he's the president of Prime.

25 Q. Okay.

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1 A. I'm not certain, but I think he is.

2 Q. So in addition to Transcontinental Realty Investors, he's
3 also involved in Prime Asset?

4 A. You're asking me about the officership of
5 Transcontinental? I can't testify to that. But I think he
6 is -- I'm almost certain he's the president of Prime.

7 Q. Okay, now, Mr. Moos, if I understand correctly, is also
8 the person that you would go to to talk to about any proposed
9 sale of property in this case, am I right?

10 A. only to the extent that his -- that his -- I'm using the
11 "his" terminology -- the TCI/ARL/IOT that that note may be
12 impugned or not be paid by the sale, I will advise him that
13 this sale is going to occur, and because of the way I've got my
14 understanding the notes are structured, that then becomes a --
15 I'm calling it a soft second, which it really is -- it's a soft
16 second, gets paid back, it rolls into unpaid, and then at the
17 end of the day, when everybody else is paid off, whatever funds
18 I have left will pay those notes.

19 Q. See if I understand what you just told us. So for
20 example, the property in which my client had a security
21 interest is this Archon property in Irving.

22 A. Yes.

23 Q. Okay. So if you had a pending proposed sale -- by the
24 way, do you have one for the Archon property?

25 A. Not yet, no.

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1 Q. Okay. So if you had a proposed sale for the Archon
2 property, then before you submitted that to the Court, you
3 would talk to Mr. Moos because the note that was given for the
4 difference between the secured debt and the book value on that
5 property which was then assigned to Transcontinental Realty
6 Investors in a note in which Mr. Moos or his company would have
7 some interest, am I right?

8 A. I want to define the word "talk to". I think that's
9 better "advise" rather than "talk to". I'm not asking consent,
10 but as a courtesy, I would tell him what's going on.

11 Q. Okay, now, in addition, you sought some advice from other
12 quarters, and I'm not referring to your counsel, either Mr.
13 Lewis or Mr. Buncher and his firm. But before the bankruptcies
14 were filed in this case, when they came to you on December 23rd
15 and they told you what the structure of this deal was, you had
16 questions about the notes as to which you consulted Mr. Jay
17 LaJone, right?

18 A. That's correct.

19 Q. And Mr. LaJone is an attorney with Bennett Weston?

20 A. That's correct.

21 Q. Okay. And Mr. LaJone was representing the transferors of
22 these properties into FRE Real Estate, right?

23 A. That's correct.

24 Q. And so when you wanted to know what these notes meant, you
25 consulted Mr. LaJone, correct?

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1 A. Well, it's more than that. Basically, I wrote the
2 question to Mr. Crown, and Mr. Crown and I had exactly the same
3 understanding.

4 Q. And Mr. Crown, for the record --

5 A. Mr. Crown -- Mr. Crown works for Prime Asset.

6 Q. Okay.

7 A. And he was -- he was enlisted by Prime to assist me in
8 preparing all the schedules. He had the same understanding of
9 being a soft second. We have since validated that with Mr.
10 Moos as his understanding of what it was, and that's the way we
11 filed it in our last filings.

12 Q. I'm just asking about the time before the bankruptcy was
13 filed, between December 23rd and January 4. Did you seek
14 independent counsel to give -- that is to say, somebody other
15 than somebody who is involved in these entities that were
16 making, helping you, facilitate, creating documents for these
17 transactions -- did you get independent counsel of your own at
18 that time?

19 A. I didn't have to because if I -- if I -- the way I
20 understood it is the way that it has come down, that's the way
21 it is. It's a matter of understanding.

22 Q. All right, and correct me if I'm wrong, but when this came
23 to your attention on December 23rd, these conveyances were
24 already either happening or had already happened. Am I right?

25 A. That's correct.

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1 Q. So they handed you this package and said you will be the
2 person responsible for this entity that owns all these
3 properties, and you'll restructure it as is, am I right?

4 A. Incorrect statement.

5 Q. Okay.

6 A. They handed me the properties, said we'd like for you to
7 do this. Look it over, study, and see if you would.

8 Q. I understand. But you weren't furnished with an
9 alternative. That is to say, you weren't given the opportunity
10 to say, no, I don't think these transactions should be conveyed
11 into one entity; let's do it as separate entities, am I right?

12 A. No, my job was to decide whether I wanted to take the
13 package as a whole.

14 Q. As is?

15 A. Yes.

16 Q. And so the idea of separate bankruptcies -- well, let me
17 qualify this. They didn't talk to you about the prospect that
18 FRE Real Estate would be filing a bankruptcy on December 23rd,
19 at all, did they?

20 A. No.

21 Q. Okay. So the first that you heard about the prospect that
22 the entity that you were controlling would be filing bankruptcy
23 was when?

24 A. I don't remember the exact date; it was after that date,
25 no.

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- 1 Q. Who told you?
- 2 A. I don't recall.
- 3 Q. Was it Mr. Moos or Mr. Akin or somebody like that?
- 4 A. I don't recall.
- 5 Q. Was it somebody that offices at one of these two Valley
- 6 View Lane addresses?
- 7 A. I'm sure it was. I just don't recall the person that told
- 8 me about it.
- 9 Q. Were you asked for your consent as to this --
- 10 A. Pardon?
- 11 Q. -- bankruptcy filing? Were you asked for your consent, or
- 12 was it sort of already --
- 13 A. No. I understood, once it was going to be bankruptcy, I
- 14 understood, looking at the assets, the possible logic for going
- 15 in -- putting everything in one package, but I didn't go -- I
- 16 didn't go asking any questions about it.
- 17 Q. You weren't involved in the decision process to put it in
- 18 bankruptcy?
- 19 A. That's correct.
- 20 Q. Okay. Now, we talked about Mr. LaJone. Other people that
- 21 I understand you've consulted, like, for example, in
- 22 preparation for your testimony as the corporate representative
- 23 of FRE, that involved RL Lemke and Henry --
- 24 A. Butler.
- 25 Q. -- Butler?

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1 A. Um-hmm.

2 Q. And those two people have a role at one of these entities?

3 A. They were at Prime Income, also.

4 Q. They were with Prime Income.

5 (Pause)

6 Q. Excuse me. I'm batting cleanup, here. I apologize.

7 Now, as I understood your description of these notes and
8 the way that they work, the price is determined basically off
9 of this value, and you subtract from the value which is on the
10 books of the entity at the time of the transfer the amount of
11 the booked debt, and what's left is the note, right?

12 A. In reverse. If you add the book -- add -- if you take the
13 book value and add to it, that would be the net of the debt.

14 Q. I see. But it's not as if the book value's changed, based
15 on what it was that the note and the debt were, am I right?
16 They always equal the note -- the note and the debt together
17 always equal the book value?

18 A. No.

19 Q. They didn't?

20 A. No.

21 Q. In what cases were they different?

22 A. Well, okay, let's see. No, 'cause the book value on Amoco
23 Building, like, was 3,506,000 dollars, something like that.

24 But the debt was almost nineteen million dollars, maybe in the
25 nineteen million dollars range. So the property was

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1 transferred at nineteen million dollars.

2 Q. I see. Now, the way I understand your description of how
3 this worked, Mr. Morgan, is that the ultimate amount of the
4 notes becomes somewhat irrelevant, if you don't get enough
5 money to cover the secured creditor or the unsecured creditors
6 that have claims against that property.

7 A. And administrative.

8 Q. Okay. And the administrative claims. So if the note is,
9 in the case of the Archon properties, for 6.7 million dollars,
10 and the debt against it is a little over four and a half
11 million, that the note for the remainder is not going to be
12 honored by the debtor unless you get enough money from the sale
13 of those properties to cover?

14 A. That's correct. Well, I want to clarify that, okay?

15 Q. Please.

16 A. It then becomes -- it then becomes a secondary to all
17 circumstances note, so that if, in fact, or any one example, if
18 example, if -- you said the note's 6.7. If I was able to pay
19 four million dollars on the note from the sale, and that other
20 2.7 rolls back to the backside, and if everybody else is paid
21 off, then there's enough to pay that note, he'll be paid. But
22 it's second, then, to all other claimants.

23 Q. Right, and am I correct in my appreciation that the way
24 you view these notes, the way you treat these notes for
25 purposes of the job you're doing is that the notes apply only